

**CHILDREN'S HEALTH INSURANCE PLAN ADMINISTRATIVE SERVICES AGREEMENT**  
**BETWEEN THE**  
**HEALTH & HUMAN SERVICES COMMISSION**  
**AND**  
**BIRCH & DAVIS HEALTH MANAGEMENT CORPORATION**

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STATE OF TEXAS

COUNTY OF TRAVIS

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AND  
BIRCH & DAVIS HEALTH MANAGEMENT CORPORATION**

**Article 1. INTRODUCTION**

THIS SERVICES AGREEMENT (the "Agreement") is entered into this 23<sup>rd</sup> day of December, 1999 (the "Effective Date"), between the HEALTH AND HUMAN SERVICES COMMISSION ("HHSC"), an administrative agency within the executive department of the State of Texas and having its principal office at 4900 North Lamar Boulevard, 4<sup>th</sup> Floor, Austin Texas 78751, and BIRCH & DAVIS HEALTH MANAGEMENT CORPORATION ("CONTRACTOR"), a corporation organized under the laws of the State of Maryland and having its principal office at 8905 Fairview Road, Suite 300, Silver Spring Maryland. HHSC and the CONTRACTOR may be referred to in this Agreement individually as a "Party" and collectively as the "Parties."

The Parties agree that the following terms and conditions apply to the services to be provided by the CONTRACTOR under this Agreement in consideration of certain payments to be made by HHSC.

**Article 2. BACKGROUND, INDUCEMENTS AND OBJECTIVES**

**Section 2.01 Background.**

*(a) Federal legislative authorization.*

This Agreement is entered into in connection with the Texas Legislature's decision to participate in the federally-authorized State Children's Health Insurance Program ("CHIP"). CHIP is authorized under Title XXI of the federal Social Security Act, 42 U.S.C. §§ 1397aa-1397jj. The CHIP program is an optional joint state-federal program designed to provide affordable insurance to low income families with uninsured children.

*(b) State enabling legislation.*

Approximately 1.4 million children in Texas are uninsured. The costs, both economic and social, to the State of Texas are immeasurable. In recognition of this need the 76<sup>th</sup> Texas Legislature authorized the state's participation in the CHIP program. The enabling legislation, [Senate Bill 445](#), is codified as Chapter 62, Health & Safety Code. The principal objective of the state legislation is to provide primary and preventative health care to low-

income, uninsured children of Texas, including children with special health care needs, who are not served by or eligible for other state-assisted health insurance programs.

*(c) State child health plan.*

Under chapter 62, HHSC is directed to develop and file with the federal government a state-designed health plan program that ensures the state's eligibility for federal funding under Title XXI of the Social Security Act. HHSC has delivered a plan to the federal government for approval. HHSC desires the participation of qualified organizations to assist with the implementation of the plan in Texas.

*(d) Participation of the private sector.*

As expressed in [Section 62.055](#), Health & Safety Code, it is the intent of the Texas Legislature that HHSC, in administering the state child health plan, maximize the use of private resources, including nonprofit organizations. In fulfilling this mandate, HHSC has solicited assistance with many aspects of the program, including development and operation of administrative services for the CHIP.

*(e) Procurement of administrative services.*

HHSC solicited proposals for administrative services to the CHIP through a Request for Proposals (the "RFP") dated July 7, 1999. The procurement that is the subject of this Agreement is undertaken as a "best value" procurement under to the terms of [Chapter 531](#), Texas Government Code, [Chapter 62](#), Health & Safety Code, and [Section 2155.144](#), Government Code. In response to the RFP, CONTRACTOR submitted its Proposal, dated September 7, 1999 (the "Proposal"). Following review of proposals, evaluators appointed by HHSC recommended CONTRACTOR's Proposal as the best value for the state. HHSC desires to implement the terms of CONTRACTOR's Proposal, subject to the terms and conditions of this Agreement.

**Section 2.02 Inducements.**

In making the award of this Agreement, HHSC relies on CONTRACTOR's assurances of the following:

(1) CONTRACTOR, including its subcontractors, is an established provider of a broad range of health management and administrative services;

(2) CONTRACTOR has the skills, qualifications, expertise, financial resources and experience necessary to perform the services described in the Request For Proposals, CONTRACTOR's Proposal and this Agreement in an efficient, cost-effective manner, with a high degree of quality and responsiveness, and has performed similar services for other public or private entities;

(3) CONTRACTOR has thoroughly reviewed, analyzed and understood the Request for Proposals and has had the opportunity to review and fully understand

the State's current program and operating environment for the activities that are the subject of this Agreement and the needs and requirements of the State during the Agreement term;

(4) CONTRACTOR has had the opportunity to review and fully understand the State's stated objectives in entering into this Agreement and, based on such review and understanding, CONTRACTOR currently has the capability to perform in accordance with the terms and conditions of this Agreement;

(5) CONTRACTOR also has reviewed and understands the risks associated with the CHIP program as described in the Request for Proposals, including the risk of non-appropriation of funds.

Accordingly, on the basis of the terms and conditions of this Agreement, HHSC desires to engage CONTRACTOR to perform the services described in this Agreement under the terms and conditions set forth in this Agreement.

### **Section 2.03 Mission Objectives.**

CONTRACTOR acknowledges its understanding that HHSC's overall objective in engaging CONTRACTOR pursuant to this Agreement is to obtain administrative services that are developed and conducted by CONTRACTOR. The administrative services developed by CONTRACTOR will be operated in a highly efficient and effective manner on behalf of HHSC, the state administrative agencies operating portions of the CHIP program in Texas, and the members of the CHIP program. In particular, CONTRACTOR acknowledges its understanding of HHSC's desire to achieve the following primary Mission Objectives:

- (1) Development, operation, and maintenance of a call center that is:
  - (A) Centralized;
  - (B) Statewide in operation;
  - (C) Convenient and easily accessible to members, providers, and applicants; and
  - (D) Meets all applicable performance criteria established by HHSC;
- (2) Development, operation, and maintenance of a CHIP web site that is:
  - (A) As continuously accessible to the public as is technically feasible;
  - (B) Accurate, in terms of the information provided to the public; and
  - (C) Complies with all applicable state information technology standards;



(3) Development, operation, and maintenance of an administrative services automation system that:

(A) Accurately screens applications to determine client eligibility;

(B) Rapidly and accurately refers children who may eligible for Medicaid or Healthy Kids insurance coverage to the Texas Department of Human Services and the Texas Healthy Kids Corporation, respectively; and

(C) Enables HHSC or its designee to efficiently and effectively monitor CONTRACTOR performance;

(4) A flexible relationship between HHSC and the CONTRACTOR under which the CONTRACTOR will be highly responsive to the needs and requests of HHSC and to changes in methods and strategies for providing services; and

(5) Continuous identification of methods to improve services and reduce costs.

#### **Section 2.04 Construction of Agreement.**

##### *(a) Scope of Article.*

The provisions of this [Article 2](#) are intended to be a general introduction to this Agreement and are not intended to expand the scope of the Parties' obligations under this Agreement or to alter the plain meaning of the terms and conditions of this Agreement. For purposes of this transaction, HHSC is the contracting agency acting on behalf of the Texas Children's Health Insurance Program. References in this Agreement to the State are interpreted, as appropriate, to mean or include HHSC and other State agencies that may participate in the administration of CHIP, provided, however, that no provision will be interpreted to include any entity other than HHSC as the contracting agency.

##### *(b) Severability.*

If any provision of this Agreement is construed to be illegal or invalid, such interpretation will not affect the legality or validity of any of its other provisions. The illegal or invalid provision will be deemed stricken and deleted to the same extent and effect as if never incorporated in this Agreement, but all other provisions will remain in full force and effect.

##### *(c) Survival of terms.*

Termination or expiration of this Agreement for any reason will not release either Party from any liabilities or obligations set forth in this Agreement that:

(1) The Parties have expressly agreed shall survive any such termination or expiration; or

(2) Remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.

(d) *Headings.*

The Article and Section headings in this Agreement are for reference and convenience only and may not be considered in the interpretation of this Agreement.

(e) *Global drafting conventions.*

(1) The terms “include,” “includes,” and “including” are terms of inclusion, and where used in this Agreement, are deemed to be followed by the words “without limitation.”

(2) Any references to “Sections,” “Exhibits,” or “Attachments” are deemed to be references to Sections, Exhibits, or Attachments to this Agreement.

(3) Any references to agreements, contracts, statutes, or administrative rules or regulations in this Agreement are deemed references to these documents as amended, modified, or supplemented from time to time during the term of this Agreement.

**Section 2.05 *Time of the essence.***

In consideration of the time limits for implementation of the CHIP, time is of the essence on the performance of the Services under this Agreement.

**Section 2.06 *No implied authority.***

(a) The authority delegated to CONTRACTOR by HHSC is limited to the terms of this Agreement. HHSC is the state agency designated by the Texas Legislature to administer the Texas Children's Health Insurance Program, and no other agency of the State grants CONTRACTOR any authority unless directed through HHSC. CONTRACTOR may not rely upon implied authority, and specifically is not delegated authority under this Agreement to:

(1) Make public policy;

(2) Promulgate, amend or disregard administrative regulations or program policy decisions made by State and federal agencies responsible for administration of the Medicaid program; or

(3) Unilaterally communicate or negotiate with any federal or state agency or the Texas Legislature on behalf of HHSC regarding the CHIP program.

(b) CONTRACTOR is required to cooperate to the fullest extent to assist HHSC in communications and negotiations with state and federal agencies as directed by HHSC.

## **Section 2.07 Legal Authority.**

(a) HHSC is authorized to enter into this Agreement under Sections of [Chapter 531](#), Texas Government Code, [Chapter 62](#), Texas Health & Safety Code, and [Section 2155.144](#), Texas Government Code. CONTRACTOR is authorized to enter into this Agreement pursuant to the authorization of its governing board or controlling owner or officer.

(b) The person or persons signing and executing this Agreement on behalf of HHSC, or representing themselves as signing and executing this Agreement on behalf of HHSC, warrant and guarantee that he, she, or they have been duly authorized by HHSC to execute this Agreement on behalf of HHSC and to validly and legally bind HHSC to all of its terms, performances, and provisions.

**Accordingly, unless otherwise specified in this Agreement, CONTRACTOR assures compliance with the following terms and conditions:**

## **Article 3. DEFINITIONS.**

As used in this Agreement, the following terms and conditions shall have the meanings assigned below:

**“Agreement”** means this formal, written, and legally enforceable agreement between the Parties that is awarded pursuant to state law and in accordance with the procurement solicitation instrument entitled “Children's Health Insurance Program, [Administrative Services Request for Proposals](#),” issued by HHSC on July 7, 1999.

**“Application Fee”** means the fee payable by HHSC to CONTRACTOR for CONTRACTOR's entry of information from a family's application for CHIP benefits into CONTRACTOR's automated system following processing by CONTRACTOR in accordance with standards and business rules established by HHSC.

**“Application Software”** means Software required to perform the Services other than Systems Software.

**“Approved Subcontractors”** means third party service providers contracted by the CONTRACTOR to perform any part of the Services under this Agreement or to fulfill in whole or in part a duty of the CONTRACTOR under this Agreement and that have been approved by HHSC as acceptable subcontractors.

**“Change”** means any alteration, adjustment, exchange, substitution, or modification of the Services under this Agreement that are authorized in accordance with Article 8 of this Agreement.

**“Change Order”** means an authorization to make a Change in the Services or Deliverables under this Agreement.

**“Children's Health Insurance Plan”** or **“CHIP”** means the health insurance program that is the subject of the Services under this Agreement, authorized by and funded pursuant

to Title XXI, Social Security Act (42 U.S.C. §§ 1397aa-1397jj), and administered by the Health & Human Services Commission of the State of Texas.

**"Commissioner"** means the Commissioner of Health and Human Services.

**"Confidential Information"** means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) that consists of:

- (a) Information relating to applicants or recipients of services or benefits under public programs included within the scope of the CHIP Program;
- (b) All non-public budget, expense, payment and other financial information;
- (c) Any privileged work product;
- (d) Any information identified by HHSC as confidential or not subject to required public disclosure for purposes of [Chapter 552](#), Texas Government Code;
- (e) Unless previously publicly disclosed by HHSC or another State agency or authorized by HHSC, the substance and content of any CHIP program guidance or manual; and
- (f) Information that is utilized, developed, received, or maintained by HHSC, the CONTRACTOR, or participating state agencies for the purpose of fulfilling a duty or obligation under this Agreement and that has not previously been publicly disclosed.

**"CONTRACTOR"** means Birch & Davis Health Management Corporation, a corporation organized under the laws of the State of Maryland and doing business Birch & Davis Health Management Corporation.

**"CONTRACTOR Developed Software"** means Software developed and owned by CONTRACTOR prior to or following the Effective Date exclusively for the purpose of performing the Services under this Agreement.

**"CONTRACTOR Project Manager"** means the full-time CONTRACTOR employee who is designated to serve as the primary CONTRACTOR contact in accordance with [Section 5.01](#) of this Agreement.

**"CONTRACTOR Proprietary Software"** means Software developed and owned by CONTRACTOR prior to the Effective Date for a purpose other than the sole purpose of performing the Services under this Agreement.

**"CONTRACTOR-supplied Resources"** means the office space, equipment, and supplies

**"CONTRACTOR Third Party Software"** means Software that is licensed by CONTRACTOR from a third party to perform the Services.

**“Corrective Action Plan”** means the detailed written plan required by HHSC to correct or resolve a deficiency or event causing the assessment of a liquidated damage against CONTRACTOR.

**“Deliverable”** means a written or recorded work product prepared, developed, or procured by CONTRACTOR as part of the Services under this Agreement for the use or benefit of HHSC or the State of Texas and identified in Article 7 of this Agreement.

**“Effective Date”** means December 23, 1999. For purposes of this Agreement, the term includes any period under which work is performed in accordance with a properly executed Letter of Intent between HHSC and CONTRACTOR.

**“Enrollment Fee”** means the monthly fee payable to CONTRACTOR for enrolling families determined eligible for CHIP benefits into a CHIP contracted health plan.

**“Expiration Date”** means August 31, 2001.

**“Force majeure event”** means any failure or delay in performance of a duty by a Party under this Agreement that is caused by fire, flood, earthquake, an act of God, an act of war, riot, civil disorder, or any similar event beyond the reasonable control of such Party and without the fault or negligence of such Party.

**“Health & Human Services Commission”** or **“HHSC”** means the administrative agency within the executive department of Texas state government established under [Chapter 531](#), Government Code and authorized to administer the CHIP under [Chapter 62](#), Health & Safety Code.

**“Initial Term”** means the period between the Effective Date and the original Expiration Date of this Agreement.

**“Key CONTRACTOR Personnel”** means the critical management and technical positions identified by CONTRACTOR in its Proposal and subject to the approval and oversight of HHSC in accordance with [Section 5.03](#) of this Agreement.

**“Maintenance Fee”** means the monthly fee payable by HHSC to CONTRACTOR for maintaining all information relating to the eligibility, enrollment, and membership of individuals enrolled in the CHIP.

**“Management Services Contractor”** means the entity contracted by HHSC to manage CHIP service contracts.

**“Parties”** means HHSC and the CONTRACTOR, collectively.

**“Party”** means either HHSC or the CONTRACTOR, individually.

**“Project Budget”** means the detailed financial budget prepared by CONTRACTOR and approved by HHSC that details the estimated costs for delivery of the Services under this Agreement.

**“Proposal”** means the proposal submitted by the CONTRACTOR in response to the Request for Proposals.

**“Public information”** means information that:

(1) Is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body or for a governmental body; and

(2) The governmental body owns or has a right of access to.

**“Readiness Review”** means the examination conducted by HHSC or its designee of CONTRACTOR’s availability, preparedness, and availability to fulfill its obligations under this Agreement.

**“Request for Proposals”** or **“RFP”** means the procurement solicitation instrument entitled Children's Health Insurance Program, [Administrative Services Request for Proposals](#)," issued by HHSC on July 17, 1999, and under which this Agreement was awarded and is executed. The term includes all written modifications, amendments, revisions, and errata to the RFP published by HHSC.

**“Scope of Work”** means the description of Services and Deliverables specified in Part V of the RFP, CONTRACTOR's Proposal, and [Article 7](#) of this Agreement.

**“Services”** means the tasks, functions, and responsibilities assigned and delegated to the CONTRACTOR under this Agreement and described in [Article 7](#) of this Agreement, and any ancillary or incidental tasks, functions or responsibilities not otherwise expressly described in this Agreement but which are customary or required for the proper performance or delivery of the Services.

**“Software”** means all operating system and applications software used by CONTRACTOR to provide the Services, including CONTRACTOR Proprietary Software, CONTRACTOR Third Party Software, Systems Software, CONTRACTOR Developed Software, Applications Software, and State Software.

**“State”** means HHSC or an agency within the executive or legislative branch of Texas state government other than HHSC, as appropriate.

**“State Data”** means all information regarding the CHIP program received, managed or developed by CONTRACTOR in connection with the performance of the Services from any source, including applicant information, health plan information, claims information, Confidential Information, this Agreement and its exhibits and/or attachments, and any other information designated by HHSC. State Data does not include information that is proprietary, privileged or a trade secret of CONTRACTOR.

**“State Software”** means software owned, developed or used by the State in the performance of tasks associated with the Services, including State Third Party Software.

**“State Third Party Software”** means software purchased or obtained by the State under license from another party.

**“System”** means the automated information system utilized by CONTRACTOR in the performance of the Services under this Agreement.

**“System Software”** means software, including CONTRACTOR Proprietary Software and CONTRACTOR Developed Software, that is used by CONTRACTOR to operate the automated information system employed by CONTRACTOR to perform the Services.

**“Texas Healthy Kids Corporation”** or **“THKC”** means the nonprofit corporation that administers an insurance program for certain children in the State of Texas and that was established under authority granted the Texas Legislature under [Chapter 109](#), Health & Safety Code.

**“Transition Plan”** means the written plan developed by CONTRACTOR, approved by HHSC, and to be employed in the event of an early termination of this Agreement. The Transition Plan describes CONTRACTOR's policies and procedures that will assure:

- (1) All account and creative services are maintained during the transition to a substitute service provider for administrative services to the CHIP; and
- (2) All electronic data, creative work, and physical records are accurately and completely transferred to the substitute service provider.

## **Article 4. GENERAL TERMS AND CONDITIONS**

### **Section 4.01 *Term of the Agreement.***

#### *(a) General provisions.*

This Section 4.01 will govern the period for performance of this Agreement. No commitment of funds is permitted prior to the first day or subsequent to the last day of the Initial Term and any properly executed extension of the Initial Term unless authorized under a properly executed Letter of Intent between HHSC and CONTRACTOR. The term may be extended or shortened by amendment.

#### *(b) Initial Term.*

The Initial Term of this Agreement will commence December 2, 1999, and will terminate on April 2, 2003 (“the Expiration Date”), unless terminated sooner or extended in accordance with the terms of this Agreement. The Initial Term includes any period during which work is performed under a Letter of Intent that is properly executed between HHSC and CONTRACTOR.

(c) *Optional extensions of Agreement.*

HHSC may extend the Initial Term of this Agreement by written notice to the CONTRACTOR at least 180 days before the Expiration Date.

(1) The duration of the extension shall be one (1) year.

(2) No more than two (2) one-year extensions may be issued under this Agreement.

(d) *Modifications upon extension or renewal of Agreement.*

(1) If HHSC seeks modifications to the Agreement as a condition of any extension, HHSC's notice to the CONTRACTOR will specify those modifications to the Scope of Work, the Agreement pricing terms, or other terms and conditions of the Agreement HHSC seeks.

(2) Modifications proposed by HHSC may apply to operations under this Agreement in any Agreement year beginning after the date of notice to the CONTRACTOR. CONTRACTOR must respond to HHSC's proposed modification within 30 days of receipt. Upon receipt of the CONTRACTOR's response to the proposed modifications, HHSC may enter into negotiations with the CONTRACTOR to arrive at mutually agreeable Agreement modifications. If HHSC determines that the Parties will be unable to reach agreement on mutually satisfactory Agreement modifications, then HHSC must provide written notice to the CONTRACTOR of its intent not to extend the Agreement beyond the Agreement term then in effect, at least 120 days before the Agreement Expiration Date, inclusive of all extension options previously exercised.

(e) *Transitional assistance.*

Upon receipt of notice from HHSC of termination of this Agreement, the CONTRACTOR must provide the transitional assistance specified in the Transition Plan referenced in [Article 7](#) of this Agreement.

**Section 4.02** *Scope of work.*

CONTRACTOR will perform the Services outlined in Article 7 of this Agreement and more fully described in the RFP and in CONTRACTOR's Proposal. Both the RFP and CONTRACTOR's Proposal are hereby incorporated into this Agreement for all purposes as though they were set out word-for-word in this document along with amendments to this Agreement that may be executed from time to time. The RFP is attached to this Agreement as Exhibit A. CONTRACTOR's Proposal is attached to this Agreement as Exhibit B.

**Section 4.03** *Agreement elements.*



(a) *Agreement documentation.*

The agreement between the Parties will consist of this Agreement, the RFP, CONTRACTOR's Proposal and the following clarifications and modifications to the Proposal:

(1) The document entitled "[Administrative Contract Issues Roll-up](#)," dated December 22, 1999, which is attached to this Agreement as Exhibit A and incorporated into this Agreement for all purposes as if it were set out word for word in the body of this Agreement.

(b) *Order of documents.*

In the event of any conflict or contradiction between or among these documents, the documents shall control in the following order of precedence:

(1) The final executed Agreement;

(2) All modifications and clarifications to CONTRACTOR's Proposal;

(3) CONTRACTOR's Proposal, which is attached to this Agreement as Exhibit B and incorporated into this Agreement for all purposes as if it were set out word for word in the body of this Agreement ; and

(4) The RFP, which is attached to this Agreement as Exhibit C and incorporated into this Agreement for all purposes as if it were set out word for word in the body of this Agreement.

(c) *Oral and written representations.*

No oral and written representations of the CONTRACTOR, including representations made outside of its formal Proposal documentation, have been regarded by HHSC as inducements to contract are not expressly made a part of this Agreement.

**Section 4.04 Notices.**

(a) Any notice under this Agreement must be sent by registered or certified mail, return receipt requested, or shall be delivered in hand, and a receipt provided.

(b) Any notice under this Agreement to HHSC will be sufficient if hand delivered or mailed to:

Don A. Gilbert  
Commissioner  
Health & Human Services Commission  
4900 North Lamar, 4<sup>th</sup> Floor  
Austin, Texas 78751

Copy to:  
Office of General Counsel  
Health & Human Services Commission  
P.O. Box 12347  
4900 North Lamar Blvd.  
Austin, Texas 78751

(c) Any notice under this Agreement to CONTRACTOR will be sufficient if hand-delivered or mailed to:

Clint G. Gardner  
Senior Vice President  
Birch & Davis Health Management Corporation  
510 Woodlake Drive  
McQueeney, TX, 78123

Copy to:  
Debra L. Glickfeld, Esq.  
Staff Attorney  
Birch & Davis Health Management Corporation  
8905 Fairview Road, Suite 200  
Silver Spring, MD, 20910

(d) Either Party may change its designee or address upon five (5) days' written notice to the other Party.

#### **Section 4.05 Funding.**

(a) This Agreement is expressly conditioned on the availability of state and federal appropriated funds. CONTRACTOR will have no right of action against HHSC in the event that HHSC is unable to perform its obligations under this Agreement as a result of the suspension, termination, withdrawal, or failure of funding to HHSC or lack of sufficient funding of HHSC for any activities or functions contained within the scope of this Agreement.

(b) If funds become unavailable, the provisions of [Section 14.06](#) (regarding Termination) will apply. HHSC will use all reasonable efforts to ensure such funds are available and will negotiate in good faith with CONTRACTOR to resolve any CONTRACTOR claims for payment that represent accepted Services or Deliverables and are pending at the time funds become unavailable.

#### **Section 4.06 Delegation of authority.**

Whenever, by any provision of this Agreement, any right, power, or duty is imposed or conferred on HHSC, the right, power, or duty so imposed or conferred is possessed and exercised by the Commissioner unless any such right, power, or duty is specifically

delegated to the duly appointed agents or employees of HHSC. The Commissioner will reduce any such delegation of authority to writing and a copy of such delegation of authority furnished to CONTRACTOR on request.

**Section 4.07 *No waiver of sovereign immunity.***

The Parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver by HHSC or the State of Texas of any immunities from suit or from liability that HHSC or the State of Texas may have by operation of law.

**Section 4.08 *Force majeure.***

Neither CONTRACTOR nor HHSC will be liable to the other for any delay in, or failure of performance, of any requirement contained in the Agreement caused by a force majeure event. The existence of such causes of delay or failure will extend the period of performance in the exercise of reasonable diligence until after the causes of delay or failure have been removed. Each Party must inform the other in writing with proof of receipt within three (3) business days of the existence of a force majeure event or otherwise waive this right as a defense.

**Section 4.09 *Hold harmless.***

The CONTRACTOR agrees that it shall hold harmless HHSC and its Commissioner, employees, agents, contractors, subcontractors, and independent consultants and their subcontractors and consultants from any and all actions in bid or proposal evaluation other than acts of willful misconduct and gross negligence.

**Section 4.10 *Evidence of financial solvency.***

The CONTRACTOR must satisfactorily demonstrate the financial resources to absorb the risks associated with this Agreement at the request of HHSC.

**Section 4.11 *Fidelity and performance bond.***

(a) CONTRACTOR will obtain and maintain a fidelity bond to insure against criminal conduct or fraud by CONTRACTOR employees.

(b) The fidelity bond required by this Section 4.11 must:

(1) Be issued by a surety or other entity duly licensed and authorized to conduct business in the State of Texas and rated "A" or better by a rating agency acceptable to HHSC;

(2) Be in an amount not less than \$1,000,000.00;

(3) Indemnify the state against any financial loss caused by the wrongful, fraudulent, or criminal conduct of CONTRACTOR employees, officers, or directors; and

(3) Name HHSC as the principal beneficiary of the bond.

(c) In view of the uncertainty surrounding the proper and accurate valuation of this Agreement, the Parties agree that no performance bond will be required from CONTRACTOR on the Effective Date of this Agreement.

**Section 4.12 Renegotiation and reprocurement rights.**

*(a) Renegotiation of Agreement terms.*

(1) Notwithstanding anything in this Agreement to the contrary, HHSC may at any time during the Initial Term of this Agreement exercise the option to notify CONTRACTOR that HHSC has elected to renegotiate certain terms of this Agreement as a result of the occurrence of any one or more of the following:

(A) A change in governing law or policy which, in the sole discretion of HHSC, either substantially and unreasonably increases CONTRACTOR's obligations under this Agreement or renders performance, enforcement or compliance with the Agreement impossible or patently unreasonable;

(B) The addition of new government programs to the CHIP program;

(C) Delays, slowdowns, reductions or other such events that the Parties agree are not due to the actions or inaction of CONTRACTOR and materially impede either the rollout of the CHIP program or the size, scope, or nature of the program in one or more geographical areas of the state;

(D) Changes requested by HHSC under [Section 8.02](#) of this Agreement occurring after the initiation of CHIP member enrollment; or

(C) Issuance of Federal waivers or failure to obtain requested Federal waivers that, in the sole discretion of HHSC, substantially affect the likelihood that the State's objectives described in [Section 2.03](#) of this Agreement will be achieved.

(2) Upon CONTRACTOR's receipt of any notice pursuant to this [Section 4.12](#), CONTRACTOR and HHSC will undertake good faith negotiations of the subject terms of the Agreement.

(3) CONTRACTOR may petition HHSC for renegotiation of specific pricing provisions of the Agreement if:

(A) Event identified in paragraph (a)(1) of this [Section 4.12](#) occurs; and

(B) CONTRACTOR's operational costs, as disclosed in CONTRACTOR's Proposal or supplementary cost data provided to HHSC prior to the Effective Date, increase as a result of the occurrence of the event; and

(C) The increase in CONTRACTOR's operational costs exceeds, as verified by HHSC, either:

(i) \$15,000.00 per occurrence; or

(ii) \$100,000.00 per calendar year following the Effective Date.

(4) As part of CONTRACTOR's petition to renegotiate a pricing provision of this Agreement, CONTRACTOR must provide detailed information requested by HHSC to support its petition for renegotiation, plus any further information reasonably requested by HHSC.

(5) CONTRACTOR is not entitled to petition for renegotiation of any performance obligations as part of its petition to renegotiate under this Section 4.12.

(6) If HHSC and CONTRACTOR are unable to reach agreement as a result of renegotiation within a period of thirty (30) days from the date HHSC notifies CONTRACTOR of HHSC's intent to renegotiate pursuant to this Section 4.12, or in the event that HHSC denies CONTRACTOR's petition for renegotiation, either party may request a mediation of the renegotiation issues under Section 14.17 of this Agreement.

(7) If HHSC determines that reprocurement is in the best interest of the State for any Services that are the subject of renegotiation, HHSC may proceed to issue requests for proposals to other potential contractors for performance of the Services.

*(b) Reprocurement of the Services or procurement of additional Services.*

Notwithstanding anything in this Agreement to the contrary, whether or not HHSC has accepted or rejected CONTRACTOR's Services provided during any Phase, HHSC may at any time issue requests for proposals to other potential contractors for performance of any portion of the Services covered by this Agreement or services similar or comparable to the Services performed by CONTRACTOR under this Agreement.

*(c) Termination rights upon reprocurement.*

In the event HHSC elects to procure Services from another CONTRACTOR in accordance with subsection (a) or (b) of this Section 4.12, HHSC will have the termination rights set forth in Article 14 of this Agreement.

**Section 4.13 Readiness review.**

(a) In accordance with [Section 62.051\(e\)](#), Health & Safety Code, HHSC or its designee will conduct an examination of CONTRACTOR's readiness to perform its obligations under this Agreement (the "[Readiness Review](#)"). CONTRACTOR must demonstrate to HHSC's satisfaction during the Readiness Review that it is available, prepared, and able to fulfill its obligations under this Agreement.

(b) CONTRACTOR will reasonably cooperate with HHSC or its designee during the conduct of the Readiness Review.

(c) HHSC will commence the Readiness Review under this [Section 4.13](#) no later than March 15, 2000, and will be completed within a timeframe specified by HHSC. The Readiness Review will consist of an examination of critical elements of the CONTRACTOR work plan contained in the Proposal and other matters of operational or regulatory significance identified in [Section 62.051\(e\)](#), Health & Safety Code, or by HHSC.

(d) If the Readiness Review discloses deficiencies in CONTRACTOR's operations, HHSC or its designee will identify such deficiencies in writing and address the measures CONTRACTOR must undertake to mitigate the deficiencies. CONTRACTOR must implement the measures prescribed by HHSC or alternative measures that are acceptable to HHSC.

(e) If HHSC's initial Readiness Review discloses deficiencies that require mitigation or correction, HHSC may conduct additional readiness reviews to evaluate CONTRACTOR's progress or completion of the mitigation or corrective actions described or approved by HHSC. CONTRACTOR will reasonably cooperate with HHSC during any follow-up readiness review.

## **Article 5. CONTRACTOR PERSONNEL MANAGEMENT**

### **Section 5.01 *Contractor Project Manager.***

CONTRACTOR must appoint a full-time employee to serve as the primary CONTRACTOR contact under this Agreement (the "CONTRACTOR Project Manager") subject to the HHSC's prior approval of the selected individual. The initial CONTRACTOR Project Manager is specified in CONTRACTOR's Proposal. The CONTRACTOR Project Manager will be located permanently at a site agreed upon by HHSC and CONTRACTOR and may not be replaced or reassigned by CONTRACTOR without the prior approval of HHSC.

### **Section 5.02 *Qualifications, retention and replacement of CONTRACTOR employees.***

CONTRACTOR agrees to assign an adequate number of personnel to perform the Services. The personnel CONTRACTOR assigns to perform the Services will be properly trained and fully qualified for the Services they are to perform. Notwithstanding transfer or

turnover of personnel, CONTRACTOR remains obligated to perform the Services without degradation and in accordance with this Agreement.

### **Section 5.03 *Key Contractor Personnel.***

(a) CONTRACTOR's Proposal includes a list of designated Key Contractor Personnel ("Key Contractor Personnel"). HHSC may from time to time, after consultation and agreement with CONTRACTOR, designate additional Key CONTRACTOR Personnel.

(b) The CONTRACTOR employees initially assigned to Key Contractor Personnel positions are as listed in CONTRACTOR's Proposal. CONTRACTOR employees assigned to Key CONTRACTOR Personnel positions must be assigned to performance of the Services on a full-time basis unless otherwise accepted in CONTRACTOR's Proposal or agreed to in advance by the HHSC Project Manager.

(c) Before assigning an individual to a Key Contractor Personnel position, whether as an initial or subsequent assignment, CONTRACTOR will notify HHSC of the proposed assignment, introduce the individual to appropriate HHSC representatives, and provide HHSC with a résumé and other information about the individual as reasonably requested by HHSC.

(d) If HHSC objects to the proposed assignment, HHSC and CONTRACTOR will attempt to resolve HHSC's concerns on a mutually agreeable basis. If HHSC and CONTRACTOR are unable to resolve HHSC's concerns within five (5) business days, CONTRACTOR may not assign the individual to that position and must propose to HHSC the assignment of another individual of suitable ability and qualifications. HHSC will not unreasonably withhold its approval.

(e) The CONTRACTOR employees filling Key Contractor Personnel positions may not be replaced or reassigned by CONTRACTOR without the prior approval of HHSC. CONTRACTOR must notify HHSC of any proposed change to Key Contractor Personnel not less than 14 calendar days prior to making the change. CONTRACTOR will not complete such change if HHSC objects to the assignment of the proposed new Key Contractor Personnel, but will instead propose new Key Contractor Personnel to replace the rejected individual.

### **Section 5.04 *Conduct of Contractor personnel.***

(a) While performing the Services or otherwise fulfilling a duty or obligation under this Agreement, whether on CONTRACTOR's premises or on the premises of HHSC or any Texas state administrative agency, CONTRACTOR's personnel and subcontractors must:

(i) Comply with HHSC's reasonable requests, rules and regulations regarding personal and professional conduct generally applicable to HHSC or state employees; and

(ii) Otherwise conduct themselves in a businesslike and professional manner.

(b) If HHSC determines in good faith that a particular employee or subcontractor is not conducting himself or herself in accordance with this Section 5.04, HHSC may provide CONTRACTOR with notice and documentation regarding such conduct. Upon receipt of such notice, CONTRACTOR must promptly investigate the matter and prepare a written justification to HHSC that explains why the employee or subcontractor should not be removed from HHSC's account. If HHSC disagrees with CONTRACTOR'S justification, CONTRACTOR will take appropriate action, which may include:

- (1) Removing the employee or subcontractor from HHSC's account;
- (2) Providing HHSC with notice of such removal;
- (3) Replacing the employee with a similarly qualified individual who is acceptable to HHSC; or
- (4) Providing reasonable, written assurances to HHSC that describe the measures CONTRACTOR will implement to resolve the matter and reasonably ensure against a recurrence of the issues involved in the matter.

**Section 5.05 *Responsibility for Contractor personnel.***

(a) CONTRACTOR's employees will not in any sense be considered employees of HHSC or the State of Texas, but will be considered CONTRACTOR's employees for all purposes.

(b) Except as expressly provided in this Agreement, neither CONTRACTOR nor any of CONTRACTOR's employees, subcontractors or agents may act in any sense as agents or representatives of HHSC or the State of Texas.

(c) CONTRACTOR's employees must be paid exclusively by CONTRACTOR for all services performed. CONTRACTOR is responsible for and must comply with all requirements and obligations related to such employees under local, state or federal law, including minimum wage, social security, unemployment insurance, state and federal income tax and workers' compensation obligations.

**Section 5.06 *Cooperation with HHSC or state administrative agencies.***

(a) *Cooperation with HHSC contractors.*

CONTRACTOR agrees to reasonably cooperate with and work with the state's contractors, subcontractors and third party representatives as requested by HHSC in the furtherance of the Services or in relation to CONTRACTOR's performance of the Services under this Agreement.



(b) *Cooperation with state and federal administrative agencies.*

(1) CONTRACTOR must ensure that CONTRACTOR personnel will reasonably cooperate with HHSC or other state or federal administrative agency personnel at no charge to HHSC for purposes relating to the administration of the CHIP program including, but not limited to, the following purposes:

(A) The investigation and prosecution of fraud, abuse, and waste in the Texas Title XIX Medical Assistance (Medicaid) Program or the CHIP program;

(B) Audit, inspection, or other investigative purposes; and

(C) Testimony in judicial or quasi-judicial proceedings relating to the Services under this Agreement or other delivery of information to HHSC or other agencies' investigators or legal staff.

(2) If the Parties mutually agree that the cooperation provided by CONTRACTOR in accordance with [subsection \(b\)\(1\)](#) of this [Section 5.06](#) places an unreasonable burden on CONTRACTOR or CONTRACTOR personnel, the Parties will cooperate in good faith to minimize any financial or workload impact on CONTRACTOR or CONTRACTOR personnel.

## **Article 6. GOVERNING LAW AND REGULATIONS**

### **Section 6.01 *Governing law and venue.***

This Agreement is governed by the laws of the State of Texas and interpreted in accordance with Texas law. Proper venue for litigation arising from this Agreement is the District Courts of Travis County, Texas.

### **Section 6.02 *Law and regulations governing administration of the Agreement.***

The administration of the Agreement shall be in accordance with the following laws and regulations:

(1) Title XXI of the Social Security Act, as amended, and any final regulations promulgated thereunder;

(2) [Chapter 62](#), Texas Health & Safety Code, as amended, and any administrative rules adopted under that chapter;

(4) [Chapter 531](#), Texas Government Code, as amended; and

(5) Any other pertinent provisions of Federal law or Texas law.

**Section 6.03 *Contractor responsibility for compliance with laws and regulations.***

CONTRACTOR is responsible for compliance with all laws, regulations, and administrative rules that govern the performance of the Services including, but not limited to, all state and federal tax laws, state and federal employment laws, state and federal regulatory requirements, and licensing provisions. CONTRACTOR is responsible for ensuring each of its personnel who provide services under the Agreement are properly licensed, certified, and/or have proper permits to perform any activity related to the Services.

**Section 6.04 *Laws and regulations governing procurement of the Services.***

(a) It is the express intention of the Parties that this Agreement be a procurement of administrative services and meeting all applicable requirements of the following:

- (1) Title 45, Code of Federal Regulations, Part 92;
- (2) Title 45, Code of Federal Regulations, Part 74;
- (3) [Chapter 62](#), Texas Health & Safety Code;
- (4) [Section 2155.144](#), Texas Government Code.

**Section 6.05 *Immigration Reform and Control Act of 1986.***

CONTRACTOR shall comply with the requirements of the Immigration Reform and Control Act of 1986 and the Immigration Act of 1990, 8 U.S.C. §§ 1101, *et seq.*, regarding employment verification and retention of verification forms for any individual(s) hired on or after November 6, 1986, who will perform any labor or services under this Agreement.

**Section 6.06 *Compliance with state and federal anti-discrimination laws.***

(a) To the extent such provisions are applicable to CONTRACTOR, CONTRACTOR agrees to fully comply with the following laws and regulations that implement such laws:

- (1) Title VI of the Civil Rights Act of 1964, 28 U.S.C. §§ 2000d to 2000d-4 (P.L. 88-352);
- (2) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (P.L.] 93-112);
- (3) The Americans with Disabilities Act of 1990, 29 U.S.C. § 706, 42 U.S.C. §§ 12101, *et seq.*;
- (4) 47 U.S.C. §§ 152, 221, 225, 611 (P.L. 101-336);

(5) Title 45, Code of Federal Regulations, Part 80 (relating to race, color and national origin);

(6) Title 45, Code of Federal Regulations, Part 84 (relating to handicap);

(7) Title 45, Code of Federal Regulations, Part 86 (relating to sex); and

(8) Title 45, Code of Federal Regulations, Part 91 (relating to age).

Collectively, these authorities obligate HHSC to provide services without discrimination on the basis of race, color, national origin, age, sex, disability, or political or religious beliefs. CONTRACTOR agrees that in carrying out the terms of this Agreement, it will do so in a manner that assists HHSC to comply with such obligations. CONTRACTOR will use its best efforts to make available employment opportunities for qualified individuals with disabilities.

(b) CONTRACTOR agrees to comply with the applicable requirements of Texas Labor Code, [Chapter 21](#), which requires that certain employers not discriminate on the basis of race, color, disability, religion, sex, national origin, or age.

**Section 6.07 *Environmental protection laws.***

CONTRACTOR agrees to comply with the applicable provisions of federal environmental protection laws as described in this Section:

(a) *Pro-Children Act of 1994.*

CONTRACTOR agrees to comply with the Pro-Children Act of 1994, as applicable, 20 U.S.C. §§ 6081—6084 P.L. 103-227; 108 Stat. § 104) regarding the provision of a smoke-free workplace and promoting the non-use of all tobacco products.

(b) *National Environmental Policy Act of 1969.*

CONTRACTOR agrees to comply with any applicable provisions relating to the institution of environmental quality control measures contained in the National Environmental Policy Act of 1969, 42 U.S.C. §§4321—4332,) and Executive Order 11514 (“Protection and Enhancement of Environmental Quality”).

(c) *Clean Air Act and Water Pollution Control Act regulations.*

CONTRACTOR agrees to comply with any applicable provisions relating to required notification of facilities violating the requirements of Executive Order 11738 (“Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans”).

(d) *State Clean Air Implementation Plan.*

CONTRACTOR agrees to comply with any applicable provisions requiring conformity of federal actions to State (Clean Air) Implementation Plans under §176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§740—7642).

(e) *Safe Drinking Water Act of 1974.*

CONTRACTOR agrees to comply with applicable provisions relating to the protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (21 U.S.C. § 349; 42 U.S.C. §§ 300f—300j-9).

## **Article 7. SERVICE LEVELS AND PERFORMANCE MEASUREMENT.**

### **Section 7.01 *Performance measurement.***

Satisfactory performance of this Agreement will be measured in part by:

(a) Adherence to this Agreement, including all representations and warranties;

(b) Satisfactory completion of the Readiness Review conducted in accordance with [Section 4.13](#) of this Agreement;

(c) Compliance with project work plans, schedules, and milestones as proposed by CONTRACTOR in the Technical and/or Business Proposal contained in its Proposal and as revised by CONTRACTOR and finally approved by HHSC, either prior to execution of this Agreement or as agreed to following the Effective Date;

(d) Delivery of the Services and Deliverables in accordance with the service levels and availability proposed in its Proposal and as finally approved or accepted by HHSC;

(e) Results of audits performed by HHSC or its representatives in accordance with [Article 9](#) of this Agreement;

(f) Timeliness, completeness, and accuracy of required reports; and

(g) Achievement of Service performance measures developed by CONTRACTOR and HHSC and as modified from time to time by written agreement during the Initial Term of this Agreement.

### **Section 7.02 *Measurement and monitoring tools.***

CONTRACTOR must implement all reasonably necessary measurement and monitoring tools and procedures required to measure and report CONTRACTOR's performance of the Services against the applicable service levels. Such measurement and monitoring must permit reporting at a level of detail sufficient to verify compliance with the service levels,

and will be subject to audit by HHSC. CONTRACTOR will provide HHSC with information and access to all information or work product produced by such tools and procedures upon request for purposes of verification.

**Section 7.03 *Continuous improvement and best practices.***

CONTRACTOR must on an ongoing basis, as part of its total quality management process, identify ways to improve performance of the Services and identify and apply techniques and tools from other installations within its operations that would benefit the State either operationally or financially.

**Section 7.04 *Discretionary resources.***

Within the limits described in [Section 4.12\(a\)\(3\)](#) of this Agreement, CONTRACTOR will make available to HHSC a specified amount of programmer analyst time and technical analyst time at no additional charge on an annual basis (“Discretionary Resources”). Discretionary Resources will be used only as requested by HHSC. Without limiting the foregoing, the Parties acknowledge that Discretionary Resources are not intended to be applicable to work required in support of Change Orders authorized under [Section 8.02](#) of this Agreement.

**Section 7.05 *In-state presence.***

*(a) Central facility.*

During the Term of this Agreement, CONTRACTOR will maintain an office as described in its Proposal in Austin, Texas, or within a 35-mile radius of Austin, Texas, for the purpose of operating the call center described in [Section 7.08](#) of this Agreement and conducting mail center operations for the purpose of processing applications in accordance with [Section 7.10](#) of this Agreement.

*(b) Support for HHSC staff.*

(1) During the development and start-up of the Services, or until a date mutually agreed upon by the Parties, CONTRACTOR will provide, at not cost to HHSC or its designee, adequate working space to support one full-time staff person of HHSC’s selection (the “CONTRACTOR-provided Resources”)

(2) The CONTRACTOR-provided Resources will consist of the following items:

(A) Adequate working and storage space, dedicated computer equipment, dedicated telephone equipment

(3) CONTRACTOR-provided Resources will be supplied for the following purposes:

(A) To enable HHSC's monitoring CONTRACTOR's progress in the implementation of its Work Plan;

(B) To enable HHSC provide assistance or guidance as appropriate; or

(C) To communicate requests for direction or information to HHSC or its management services contractor.

**Section 7.06 Business infrastructure.**

CONTRACTOR will establish and/or maintain the telecommunications, hardware, and software infrastructure it will use in providing the Services under this Agreement as described in CONTRACTOR's Proposal, as modified by CONTRACTOR and approved by HHSC.

**Section 7.07 Work Plan.**

(a) CONTRACTOR will, as the case may be, develop, implement, modify, and/or update the Work Plan contained in CONTRACTOR's Proposal, as modified by CONTRACTOR with the approval of HHSC.

(b) CONTRACTOR's Work Plan will consist, at a minimum, of the following critical elements:

(1) System development methodology, including risk assessment and change management;

(2) System design, development, testing, and implementation;

(3) Interfaces design, development, testing, and implementation;

(4) Procurement of hardware;

(5) Web site design, development, testing, and implementation;

(6) Recruitment, hiring, and training of staff (noting specific requirements for staff training on cultural competency and the unique needs of children with disabilities);

(7) Procurement and set-up of Austin operation, including all necessary telecommunications infrastructure associated with the call center and on-line access to the system by HHSC staff and health care providers;

(8) Development and implementation of application processing policies and procedures;

(9) Design, production and approval of written materials related to enrollment, cost sharing, appeals, and grievances;

(10) Risk management plan; and

(11) Transition plan for transferring all contractual responsibilities to a subsequent contractor.

**Section 7.08 *Call center operations.***

(a) Except as provided in [Section 7.09](#) of this Agreement, CONTRACTOR will develop, equip, and operate a call center that includes the elements, functions, or capabilities described in this [Section 7.08](#), as required by the RFP, and as specified in CONTRACTOR's Proposal.

(b) Call center operations must be conducted and will be measured in accordance with the following:

- (1) The specifications stated in the RFP;
- (2) CONTRACTOR's Proposal;
- (3) Business rules or procedures adopted or approved by HHSC; and
- (4) Administrative rules adopted by HHSC.

(c) CONTRACTOR's call center operations must commence no later than April 3, 2000.

(c) CONTRACTOR's call center operations must include the following elements, functions, or capabilities:

- (1) Toll-free telephone numbers.

(A) CONTRACTOR will obtain 2 toll free telephone numbers that will be operated for the following functions:

(i) Eligibility and enrollment hotline—a toll free number for use by persons inquiring about eligibility and staffed by persons with the training and qualifications specified in the RFP and CONTRACTOR's Proposal;

(ii) Provider hotline—a toll free number to be used by CHIP health care providers to inquire about eligibility, enrollment, and primary care provider selection and staffed by persons with the training and qualifications specified in the RFP and CONTRACTOR's Proposal.

(B) The toll free numbers obtained by CONTRACTOR will revert to HHSC on behalf of the State of Texas on the Expiration Date.

- (2) Accessibility.

(A) CONTRACTOR's call center operations must be accessible by non-English speaking persons and persons who are deaf and hard of hearing.

(B) CONTRACTOR will ensure accessibility by non-English speaking persons and persons who are deaf and hard of hearing as described in CONTRACTOR's Proposal or as reasonably specified by HHSC.

(C) The duty imposed on CONTRACTOR under this Section 7.08 does not supersede a duty imposed on CONTRACTOR under the following:

(i) The Americans with Disabilities Act of 1990, 29 U.S.C. § 706, 42 U.S.C. §§ 12101, *et seq.*;

(ii) Title VI of the Civil Rights Act of 1964, 28 U.S.C. §§ 2000d to 2000d-4 (P.L. 88-352); or

(iii) Title 45, Code of Federal Regulations, Parts 80 (relating to race, color and national origin) and 84 (relating to handicap).

**Section 7.09 *Interim hotline.***

(a) CONTRACTOR will establish, equip, operate and maintain an interim hotline prior to the CHIP Start Date to receive inquiries regarding CHIP and record personal data supplied by callers for the purpose of conducting follow-up communications.

(b) HHSC or its designee will conduct follow-up communications with callers to the interim hotline.

**Section 7.10 *Application processing.***

(a) CONTRACTOR will develop, equip, operate, and maintain a business process for processing applications submitted by or on behalf of families seeking CHIP benefits that receives and processes such applications in accordance with:

(1) This Section 7.10;

(2) The requirements of the RFP;

(3) The commitments in CONTRACTOR's Proposal; and

(4) Business rules, administrative rules or policies adopted or approved by HHSC.

(b) CONTRACTOR will begin to receive applications for CHIP eligibility no later than April 2, 2000.

(c) In addition to any other requirements adopted by HHSC or required by state or federal law or regulations, CONTRACTOR will implement, as part of its eligibility and



screening process, a procedure to identify a child on whose behalf an application for CHIP benefits is submitted and who is identified as a member of a special population, including:

(1) A child who is identified as a Native American;

(2) A child who is identified as a child with complex special health care needs; and

(3) A child who is identified as the child of an employee of the State of Texas or an agency of the State of Texas who is eligible for enhanced premium subsidy authorized by the Texas Legislature and administered through the Employees Retirement System of Texas.

(d) CONTRACTOR will implement, as part of its eligibility and screening process, a procedure to process applications and make required referrals within the timeframes specified in the RFP.

(e) CONTRACTOR will implement, as part of its eligibility and screening process, a procedure to ensure timely and accurate referral of persons who may be eligible for either Medicaid or Texas Healthy Kids insurance coverage to the Texas Department of Human services or THKC, respectively.

(f) CONTRACTOR will implement, as part of its eligibility and screening process, the development, operation, and maintenance of secure electronic interfaces that accomplish data exchanges with the following agencies, programs, and entities:

(a) Texas Department of Human Services;

(b) Texas Healthy Kids Corporation;

(c) Texas Department of Health;

(d) The federal Alien Status Verification Index;

(e) The Medicaid Fraud and Abuse System of HHSC; and

(f) The Employees Retirement System of Texas.

**Section 7.11 *Enrollment, re-enrollment, and disenrollment.***

(a) CONTRACTOR will implement a business process and automated system that will complete the enrollment, re-enrollment, and disenrollment functions specified in the RFP.

(b) CONTRACTOR's enrollment operations will commence no later than May 1, 2000.

**Section 7.12 *Client cost-sharing.***

(a) CONTRACTOR must implement a timely, accurate, flexible and effective procedure for managing the cost-sharing obligations of all CHIP member other than members who are identified as Native Americans.

(b) The procedures implemented by CONTRACTOR to administer cost-sharing obligations must contain, at a minimum, the features specified in the RFP and be sufficiently flexible in administrative and systems operations to accommodate reasonable changes in law or policy that affects cost-sharing obligations of CHIP members.

### **Section 7.13 Health plan payment functions.**

(a) CONTRACTOR must implement a process and System that will accurately, timely, and efficiently calculate amounts payable to each CHIP health plan.

(b) Unless otherwise specified by HHSC, such calculation must be based on a per-member, per-month premium basis and properly account for disenrollments in accordance with standards, rules, or policies adopted or approved by HHSC.

(c) CONTRACTOR must ensure that health plan premium payment data is transmitted to HHSC monthly by the date specified by HHSC. CONTRACTOR's failure to meet this requirement will subject CONTRACTOR to liquidated damages in accordance with [Article 14](#) of this Agreement.

### **Section 7.14 Applicant/member appeals and complaints.**

(a) CONTRACTOR must develop, implement, and maintain an appeals and complaint process subject to approval by HHSC that enables a person or family to appeal the following:

- (1) A denial of CHIP eligibility;
- (2) Disenrollment from CHIP; and
- (3) An increase in cost-sharing obligations.

(b) CONTRACTOR, in operating a system of appeals and complaints must:

- (1) Ensure timely, accurate, and complete review of the matter appealed or the complaint;
- (2) Ensure accurate, complete, and timely automated tracking of the appeal or complaint; and
- (3) Ensure all information relevant to the appeal or complaint is maintained in the event HHSC reviews CONTRACTOR's disposition of a particular appeal.

(c) CONTRACTOR will not be responsible for providing an appeal of a denial of eligibility to a program that CONTRACTOR may refer a person to, such as the Medicaid or Title V health care programs.

**Section 7.15 *Systems development, maintenance and operation.***

*(a) General responsibilities.*

CONTRACTOR will develop, maintain, and operate the automated information system described in CONTRACTOR's Proposal that will be utilized by CONTRACTOR in the performance of the Services under this Agreement (the "System") and that performs functions necessary and convenient to the delivery of the Services, including, but not limited to, the following:

*(1) System data-handling.*

The System will manage, process, and store data in accordance with the requirements of the RFP, CONTRACTOR's Proposal, [Article 13](#) of this Agreement, and [Article 16](#) of this agreement.

*(2) Data recovery.*

The System will recover data in accordance with the representations in CONTRACTOR's Proposal or as specified by HHSC.

*(3) Data back-up.*

(A) CONTRACTOR will develop, equip, operate, and maintain a facility that will conduct back-up operations of all critical operational data (including all major data files, microfiche records, computer programs, system and operations, and documentation) received, generated, and maintained by the System in accordance with the representations in CONTRACTOR's Proposal or as specified by HHSC.

(B) In fulfilling the requirements of this Section 7.15, CONTRACTOR will implement a data back-up plan subject to HHSC approval.

(C) The data back up operations described in this Section 7.15 will be conducted at a site other than the central facility established by CONTRACTOR for data center operations.

*(4) Disaster recovery.*

(A) CONTRACTOR will implement a disaster recovery plan subject to HHSC approval that will specify the measures CONTRACTOR will take to

ensure continuation or resumption of data center operations following a natural disaster (the “Disaster Recovery Plan”).

(B) If a disaster causes an outage or interruption of CONTRACTOR data center or telecommunications (including call center) operations, CONTRACTOR will ensure administrative services normally furnished by CONTRACTOR will be fully available within 5 business days of the disaster causing the outage or interruption. Failure to comply with this requirement will subject CONTRACTOR to imposition of liquidated damages under [Article 14](#) of this Agreement.

(C) As part of the Disaster Recovery Plan, CONTRACTOR will take the following measures:

(i) Test the operability of the Disaster Recovery Plan within 180 calendar days of the Effective Date;

(ii) Test the operability of and, if necessary, upgrade the Disaster Recovery Plan at least once every calendar year during the term of this Agreement;

(iii) Certify to the State that the disaster recovery plans are fully operational prior to the Effective Date and, if requested by HHSC, subsequent to the Effective Date;

(iv) Upon discovery by CONTRACTOR, immediately provide HHSC with a notice of a disaster and implement the disaster recovery plans upon the occurrence of a disaster at a CONTRACTOR facility that affects the provision or receipt of the Services; and

(v) Reinstitute the data operations that comprise part of the Services within the timeframe specified in paragraph (a)(4)(B) of this [Section 7.15](#).

(D) In the event of a disaster, CONTRACTOR will not increase its charges under this Agreement.

(E) CONTRACTOR will supply any data or information (including cost information) HHSC may require in order to secure a waiver under House Bill 1, 76<sup>th</sup> Texas Legislature (General Appropriations Act), Article IX, Section 9-6.23 (“West Texas Disaster Recovery and Data Operations Center”). CONTRACTOR will reasonably cooperate with HHSC to secure such waiver.

(5) *CHIP web site.*

(A) CONTRACTOR must develop, operate, and maintain an Internet web site for CHIP that provides information to the public regarding CHIP and contains the content approved or supplied by HHSC (the “CHIP Web Site”).

(B) CONTRACTOR will be responsible for ensuring the CHIP Web Site operates efficiently, reliably, and in accordance with the performance standards, business rules, or administrative rules adopted or approved by HHSC.

(C) CONTRACTOR's failure to operate and/or maintain the CHIP Web Site in accordance with the requirements of the Agreement will be subject to the imposition of liquidated damages in accordance with [Article 14](#) of this Agreement.

*(6) On-line access and reporting capability.*

CONTRACTOR must ensure the System has the on-line access and reporting capabilities specified in the RFP, including the required access for up to 10 personnel of HHSC's designation.

*(7) Electronic interfaces.*

The System must include the electronic interfaces specified in the RFP and referenced in [Section 7.10](#) of this Agreement.

*(b) Waiver of mandatory state law requirements.*

CONTRACTOR will supply any data or information (including cost information) HHSC may require in order to secure a waiver under House Bill 1, 76<sup>th</sup> Texas Legislature (General Appropriations Act), Article IX, Section 9-6.23 ("West Texas Disaster Recovery and Data Operations Center"). CONTRACTOR will reasonably cooperate with HHSC to secure such waiver.

**Section 7.16 *Community-based Organization Training.***

(a) CONTRACTOR will develop, produce, and maintain training materials for community-based organizations ("CBOs") that contract with HHSC to educate families of uninsured children and assist them with the generic application process.

(b) CONTRACTOR will conduct training events as described in CONTRACTOR's Proposal at up to eight locations throughout the state for the CBOs identified by HHSC. The training events must occur between February 1, 2000 and March 31, 2000, or on alternative dates mutually agreed to by the Parties.

**Section 7.17 *Transitional Assistance.***

(a) Following the Expiration Date or following an early termination of this Agreement, CONTRACTOR will provide the following technical and professional assistance during the transition of the Services to the State or another contractor (the "Transitional Assistance"):

(1) Two full time equivalent (FTE) positions dedicated for a period of 3 months to assist with the transition of the services;

(A) The FTEs dedicated by CONTRACTOR will be sufficiently knowledgeable and experienced in the delivery of the Services and will be subject to the approval of HHSC, whose approval will not unreasonably be withheld; and

(2) Consulting and/or technical services to assist with the transition on time-and-materials basis at CONTRACTOR's then-current rates. As of the Effective Date and merely for purposes of illustration, such rates for work performed at CONTRACTOR's facilities are as follows:

(A) Program Manager—\$124.50 per hour;

(B) Senior Systems Analyst—\$104.25 per hour;

(C) Senior Software Engineer—\$83.25 per hour; and

(D) Software Engineer—\$52.50 per hour.

(b) The Transitional Assistance provided by CONTRACTOR under this Section 7.17 includes all necessary and incidental services required to adequately fulfill CONTRACTOR's obligations under this Section 7.17.

#### **Section 7.18 Productivity and Management Tools.**

CONTRACTOR will utilize project management tools, including productivity aids and project management systems, as reasonably necessary to perform the Services. CONTRACTOR will use project management tools in all major projects and employ a regular reporting mechanism to identify project tasks, present current status reports, and to identify potential problems.

### **Article 8. AMENDMENTS, MODIFICATIONS, AND CHANGE ORDERS**

#### **Section 8.01 Modifications.**

(a) *Modifications resulting from changes in law or contract.*

(1) If Federal or State laws, rules, regulations, policies or guidelines are adopted, promulgated, judicially interpreted or changed, or if contracts are entered or changed, the effect of which is to alter the ability of either Party to fulfill its obligations under this Agreement, the Parties will promptly negotiate in good faith appropriate modifications or alterations to the Agreement and any Schedule(s) or Attachment(s) made a part of this Agreement.

(2) Any modifications or alterations to this Agreement under this Section 8.01 must:

(A) Equitably adjust the terms and conditions of this Agreement; and

(B) Be limited to those provisions of this Agreement affected by the change.

(b) *Modifications resulting from imposition of remedies.*

This Agreement may be modified under the terms of [Article 14](#) (relating to Remedies and Disputes). This Agreement may not be amended or modified unless such amendment or modification is in writing and signed by individuals with authority to bind the parties.

(c) *Modifications upon renewal or extension of Agreement.*

(1) If HHSC seeks modifications to the Agreement as a condition of any annual extension, HHSC's notice to the CONTRACTOR will specify those modifications to the Scope of Work, the Agreement pricing terms, or other terms and conditions of the Agreement HHSC seeks.

(2) Modifications proposed by HHSC may apply to the services under this Agreement in any Agreement year beginning after the date of notice to CONTRACTOR. CONTRACTOR must respond to HHSC's proposed modification within 180 days of receipt. Upon receipt of CONTRACTOR's response to the proposed modifications, HHSC may enter into negotiations with CONTRACTOR to arrive at mutually agreeable Agreement amendments. In the event that HHSC determines that the Parties will be unable to reach agreement on mutually satisfactory Agreement modifications, then HHSC must provide written notice to CONTRACTOR of its intent not to extend the Agreement beyond the Agreement term then in effect, at least 90 days before the Agreement expiration date, inclusive of all extension options previously exercised.

## **Section 8.02 *Change Order procedures.***

(a) *Expectations and understandings.*

As specified in [Section 8.01](#) of this Agreement, the Agreement may be amended by HHSC and CONTRACTOR by mutual agreement. Changes in contracted Services or Deliverables shall be authorized in accordance with this [Article 8](#).

(b) *Change order approval procedure.*

(1) During the Initial Term of this Agreement HHSC or CONTRACTOR may propose changes in the Services, Deliverables, or other aspects of this Contract ("Changes") and any such Changes will be implemented pursuant to the procedures set forth in this [Section 8.02](#).

(2) If HHSC desires to propose a Change, it shall deliver a written notice to the CONTRACTOR Project Manager describing the proposed Change (“Change Order Request”). The CONTRACTOR must respond to such proposal within 30 calendar days by preparing, at no additional cost to HHSC, and delivering to the HHSC Project Manager a written document (a “Change Order Response”), that specifies:

(A) The effect, if any, of the Change Order Request on the amounts payable by HHSC under this Contract and the manner in which such effect was calculated;

(B) The effect, if any, of the Change Order Request on CONTRACTOR’s performance of its obligations under this Agreement, including the effect on the Services or Deliverables;

(C) The anticipated time schedule for implementing the Change Order Request; and

(D) Any other information requested in the Change Order Request or which is reasonably necessary for HHSC to make an informed decision regarding the proposal.

(3) If HHSC accepts the Change Order Response, CONTRACTOR must indemnify and hold harmless HHSC from and against any losses, costs or expenses resulting from any inaccurate or incomplete information contained in the Change Order Response. A Change Order Response constitutes an irrevocable Proposal by CONTRACTOR to implement the proposal described therein on the terms set forth in the Change Order Response.

(4) If CONTRACTOR desires to propose a Change, it must deliver a CONTRACTOR Change Order Request to HHSC that includes the information described in paragraph (b)(2) of this Section 8.02 for a Change Order and Change Order Response.

(c) *Written approval required.*

(1) No Change to the contracted Services or Deliverables or any other aspect of this Agreement will become effective without the written approval of the HHSC Project Manager and CONTRACTOR.

(2) If HHSC accepts CONTRACTOR’s proposal set forth in the Change Order Response or the CONTRACTOR Change Order Request, any such Change will thereafter be deemed part of the Services and this Contract will be amended accordingly and signed by HHSC and CONTRACTOR in compliance with Section 8.01 or Section 8.03 of this Agreement.



(3) Under no circumstances will CONTRACTOR be entitled to payment for any work or services rendered under a Change Order that has not been approved by HHSC in accordance with the Change Order Procedures.

**Section 8.03 *Required compliance with modification procedures.***

No different or additional services, work, or products will be authorized or performed except pursuant to an amendment or modification of this Agreement that is executed in compliance with this Article. No waiver of any term, covenant, or condition of this Agreement will be valid unless executed in compliance with this Article 8. CONTRACTOR will not be entitled to payment for any services, work or products that are not authorized by a properly executed Agreement amendment or modification, or through the express authorization of HHSC.

**Article 9. AUDIT AND FINANCIAL COMPLIANCE.**

**Section 9.01 *Financial record retention and audit.***

CONTRACTOR agrees to maintain and retain supporting financial information and documents which are adequate to ensure that claims for contract funds are made in accordance with applicable Federal and State requirements to ensure the accuracy and validity of CONTRACTOR invoices. Such documents shall be maintained and retained by CONTRACTOR for a period of three (3) years and ninety (90) days after the date of submission of the final billing or until the resolution of all audit questions, whichever is longer. CONTRACTOR agrees to repay any valid, undisputed audit exceptions taken by HHSC in any audit of this contract.

**Section 9.02 *Operation/performance audits.***

CONTRACTOR agrees to make available upon reasonable notice, at reasonable times and for reasonable periods all books, records, and supporting documents kept current by CONTRACTOR pertaining to this Agreement, wherever such books, records, and supporting documentation are maintained, for purposes of inspecting, monitoring, auditing, or evaluation by HHSC, the State Auditor of Texas, the Comptroller General of the United States, the United States Department of Health and Human Services, a State or Federal law enforcement agency, or their representatives upon request or notification from HHSC.

**Section 9.03 *Access to records, books, and documents.***

(a) Upon reasonable notice, CONTRACTOR must provide the officials and entities identified in paragraph (b) of this Section 9.03 with prompt, reasonable, and adequate access to any records, books, documents, and papers that are directly pertinent to the performance of the services under this Agreement. Such access must be provided upon request of the officials or entities identified in paragraph (b) of this Section 9.03 for the purpose of

examination, audit, investigation, contract administration, or the making of excerpts or transcripts.

(b) The access required under this Section 9.03 must be provided to the following officials and/or entities:

- (1) The United States Department of Health and Human Services or its designee;
- (2) The Comptroller General of the United States or its designee;
- (3) CHIP program personnel from HHSC or the Texas Department of Health;
- (4) The Office of Investigations and Enforcement of HHSC;
- (5) The CHIP program Management Services Contractor, when acting on behalf of HHSC;
- (6) The Office of the State Auditor of Texas or its designee; and
- (7) A special or general investigating committee of the Texas Legislature or its designee.

**Section 9.04 *Audits of Services and Inspections.***

(a) Upon notice from HHSC, CONTRACTOR shall provide, and shall cause its subcontractors to provide, such auditors and inspectors as HHSC may from time to time designate, with:

- (1) Access to the Service Locations and the Software and Equipment for the purpose of performing audits or inspections of the Services and the business of the State (including data processing, application development, the procurement of new systems, disaster recovery, maintenance and support, telecommunications, and the systems and physical environments on or in which the Services are performed); and
- (2) Any assistance that such auditors and inspectors may require. Such assistance shall be provided as part of the Services.

(b) If any audit, review, or inspection by an auditor or inspector designated by HHSC or a regulatory authority results in CONTRACTOR being notified that it or its subcontractors are not in compliance with any law, regulation, audit requirement, or generally accepted accounting principle relating to the Services, CONTRACTOR shall, and shall cause its subcontractors to, take actions to comply with such audit.

(c) With respect to any finding of noncompliance under paragraph (b) of this Section 9.04, HHSC shall bear the expense of any such compliance that is:

(1) Required by a law, regulation, or other audit requirement relating to the State's business; or

(2) Necessary due to the State's noncompliance with any law, regulation, or audit requirement imposed on the State.

(d) With respect to any finding of noncompliance under paragraph (b) of this Section 9.04, CONTRACTOR shall bear the expense of any such compliance that is:

(1) Required by a law, regulation, or other audit requirement relating to CONTRACTOR's business;

(2) Performed by CONTRACTOR as part of the Services; or

(3) Necessary due to CONTRACTOR's noncompliance with any law, regulation, or audit requirement imposed on CONTRACTOR.

(d) As part of the Services, CONTRACTOR shall provide to HHSC a copy of those portions of CONTRACTOR's and its subcontractors' internal audit reports relating to the Services provided to the State under this Agreement.

#### **Section 9.05 *Audit of Contractor fees.***

CONTRACTOR shall provide, and shall cause its subcontractors to provide, to HHSC and its designees access to such financial records and supporting documentation as may be reasonably requested by HHSC. Upon reasonable notice from HHSC, HHSC may audit the Fees charged to HHSC to determine that such Fees are accurate and in accordance with this Agreement. If, as a result of such audit, HHSC determines that CONTRACTOR has overcharged the State, HHSC shall notify CONTRACTOR of the amount of such overcharge and CONTRACTOR shall promptly pay to HHSC the amount of the overcharge, plus interest at the prime rate established by the State as of the date such sum was due, but in no event to exceed the highest lawful rate of interest, calculated from the date of receipt by CONTRACTOR of the overcharged amount until the date of payment to HHSC. In the event any such audit reveals an overcharge to HHSC, CONTRACTOR shall reimburse HHSC for the cost of such audit.

#### **Section 9.06 *Audit Software.***

As part of the Services, CONTRACTOR shall operate and maintain such audit software as HHSC or its designees may provide to CONTRACTOR from time to time during the Term.

### **Article 10. TERMS AND CONDITIONS OF PAYMENT.**

#### **Section 10.01 *Fixed fee contract.***

(a) CONTRACTOR agrees to provide the Services and Deliverables described in [Article 7](#) of this Agreement during the Initial Term for a monthly fee that represents the aggregate of the following amounts:

(1) Application Fees payable for the previous month of the Services as provided in [Section 10.02](#) of this Agreement;

(2) Enrollment Fees payable for the previous month of the Services as provided in [Section 10.03](#) of this Agreement;

(3) Maintenance Fees payable for the previous months of the Services as provided in [Section 10.04](#) of this Agreement; and

(4) Any fees for ad hoc reports at the rate or rates provided in [Section 10.05](#) of this Agreement.

(b) If this Agreement is extended in accordance with [Section 4.01](#) of this Agreement, the Application Fee, Enrollment Fee, and Maintenance Fee will be in the amount specified under [Section 10.06](#) of this Agreement.

(c) As of the Effective Date, no fee for processing of applications filed via an on-line application process will be paid.

(d) CONTRACTOR understands and expressly assumes all risks associated with the commitment of delivery of the Services and Deliverables, including the failure, termination or suspension of funding to HHSC, delays or denials of required approvals, and cost overruns not reasonably attributable to HHSC. To the extent funding or required approvals are not provided, CONTRACTOR will not be further obligated to provide Services or Deliverables beyond any Service or Deliverable that HHSC is unable to provide acceptable assurances of available funding.

(e) CONTRACTOR further agrees that:

(1) Except as provided in [Section 10.05](#) and [Section 10.06](#) of this Agreement, the fee for the Services and Deliverables referenced in this [Section 10.01](#) represents the total cost to HHSC and the State of Texas for the contracted Services and Deliverables;

(2) No additional charges, fees, or costs will be added to this amount or sought except for properly authorized and executed Change Orders or as allowed under [Section 4.12](#) of this Agreement;

(3) No other charges for tasks, functions, or activities that are incidental or ancillary to the delivery of the Services and Deliverables will be sought from HHSC or any other state agency, nor will the failure of HHSC or any other party to pay for such incidental or ancillary services entitle CONTRACTOR to withhold Services or Deliverables due under the Agreement;

(A) For purposes of this Section 10.01, the phrase “incidental or ancillary” means:

(i) All tasks, activities, approvals, permissions, or business functions that are considered normal, routine, customary, related, subordinate or required for the delivery of the Services in the regular course of business;

(ii) All tasks, activities, approval, permissions, or business functions that are considered normal, routine, customary, related, subordinate or required for the delivery of the Services under the data recovery plan and disaster recovery plan approved by HHSC in accordance with [Section 7.15](#) of this Agreement;

(B) As used in this Section 10.01, the phrase “incidental or ancillary” includes all necessary, appropriate, or convenient professional, technical, or non-technical support or assistance, whether considered supplementary, subordinate, or merely related to the Services; and

(4) CONTRACTOR will not be entitled to payment for any Service or Deliverable unless and until it has been performed or delivered to HHSC and that no partial or progress payments will be made except as mutually agreed upon by the Parties.

#### **Section 10.02 *Application Fee.***

(a) *Purpose.*

A portion of the monthly fee paid to CONTRACTOR will represent the aggregate of fees payable to CONTRACTOR for processing applications for CHIP eligibility (the “Application Fee”) during the month for which the aggregate fee is paid.

(b) *Amount of fee.*

The monthly Application Fee payment is calculated at the rate of \$21.00 per application.

(c) *Terms of payment.*

(1) The monthly application fee is payable the first month following the month in which CONTRACTOR processed applications subject to the claim for payment.

(2) CONTRACTOR may not charge HHSC an Application Fee for any application for CHIP benefits that is not received or processed under a method approved by HHSC or in accordance with business rules developed by HHSC.

#### **Section 10.03 *Enrollment Fee.***

(a) *Purpose.*

The monthly Enrollment Fee represents the amount payable to CONTRACTOR to compensate CONTRACTOR for properly and successfully enrolling a family in a CHIP health plan during the month preceding the month for which the fee is paid.

(b) *Amount of fee.*

The Enrollment Fee during the Initial Term will be \$11.00 per family enrolled in a CHIP health plan during the month for which the fee is paid.

(c) *Terms of payment.*

(1) The Enrollment Fee is payable no earlier than the month following the month in which an enrollment that satisfies the conditions of this Section 10.03 is made.

(2) Payment of an Enrollment fee is conditioned upon:

(A) The actual enrollment of a family in a CHIP health plan during the month for which the Enrollment Fee is paid; and

(B) Collection of the family's cost-sharing obligation, if any, during the month for which the Enrollment Fee is paid.

(3) CONTRACTOR may not charge, and HHSC may not pay, an Enrollment Fee for any CHIP member who is not enrolled in accordance with the method or process approved by HHSC or in accordance with business rules developed by HHSC.

**Section 10.04 Maintenance Fee.**

(a) *Purpose.*

The monthly Maintenance Fee is the amount paid to CONTRACTOR for maintaining the enrollment

(b) *Amount of fee.*

The monthly Maintenance Fee payable under this Agreement for each currently-enrolled child will be based on the following sliding scale (calculated according to the number of enrollees on the last working day of each month):

(1) For any month during which total number of enrolled members does not exceed 30,000 enrollees: \$25.00 per member;

(2) For any month during which total number of enrolled members is not less than 30,001 enrollees and not more than 75,000 enrollees: \$15.00 per member;

(3) For any month during which total number of enrolled members is not less than 75,001 enrollees and not more than 150,000 enrollees: \$9.00 per member;

(4) For any month during which total number of enrolled members is not less than 150,001 enrollees and not more than 300,000 enrollees: \$4.00 per member; and

(5) For any month during which total number of enrollees is greater than 300,000 enrollees: \$2.15 per member.

(c) *Terms of payment.*

(1) The monthly Maintenance Fee payable to CONTRACTOR is fixed according to the number of members enrolled in a CHIP health plan on the last working day of each month.

(2) The monthly Maintenance Fee payable to CONTRACTOR will be applied to all members enrolled in a CHIP health plan during the month in accordance with the rates specified in paragraph (b) of this Section 10.04.

(3) CONTRACTOR may not charge, and HHSC may not pay, a Maintenance Fee for any CHIP enrollee who is not enrolled in accordance with the method or process approved by HHSC or in accordance with business rules developed by HHSC.

**Section 10.05** *Charge for ad hoc reports.*

(a) Ad hoc reports prepared by CONTRACTOR at the request of and with the authorization of HHSC will be provided at no cost to HHSC if the ad hoc request is within the reporting capabilities of CONTRACTOR's report writer, as specified in CONTRACTOR's Proposal.

(b) To the extent an ad hoc report exceed the reporting capabilities of CONTRACTOR's report writer, CONTRACTOR will obtain HHSC's approval prior to generating such ad hoc report, and such ad hoc report will be reimbursed by HHSC at the following rate(s):

(1) Program Manager—\$130.00 per hour;

(2) Project Manager—\$110.00 per hour;

(3) Task Manager—\$80.00 per hour;

(4) Quality Assurance Manager—\$75.00 per hour;

(5) Quality Assurance Analyst—\$55.00 per hour;

(6) Cost Analyst—\$75.00 per hour;

- (7) Project Control Specialist—\$40.00 per hour;
- (8) Project Administration Specialist—\$35.00 per hour;
- (9) Administrative Assistant—\$25.00 per hour;
- (10) Principal Consultant—\$150.00 per hour;
- (11) Senior Consultant—\$110.00 per hour;
- (12) Consultant—\$90.00 per hour;
- (13) Associate Consultant—\$65.00 per hour;
- (14) Principal Business Process Reengineering Specialist—\$120.00 per hour;
- (15) Senior Business Process Reengineering Specialist—\$85.00 per hour;
- (16) Principal Information engineer—\$120.00 per hour;
- (17) Senior Information Engineer—\$65.00 per hour;
- (18) Senior Functional Analyst—\$75.00 per hour; and
- (19) Functional Analyst—\$50.00 per hour.

**Section 10.06 *Fees payable upon extension of the Agreement.***

(a) If HHSC exercises an option to extend this Agreement under [Section 4.01](#) of this Agreement, HHSC and CONTRACTOR will negotiate the monthly fees to be paid prior to the effective date of any extension of this Agreement.

(b) The monthly fees specified in this Section 10.06 are payable no earlier than the first day of the second month following the Expiration Date and will compensate CONTRACTOR for the Services performed commencing the first day of the month following the Expiration Date.

**Section 10.07 *Invoices.***

(a) CONTRACTOR will be paid in accordance with the schedule provided in its Proposal. CONTRACTOR will submit an invoice for Service and/or Deliverables to the HHSC Project Manager, the HHSC Accounting department, and the CHIP Management Services contractor (if any) in accordance with the payment schedule. HHSC will notify CONTRACTOR of addresses and addressees following execution of this Agreement.

(b) Upon HHSC's request, the CONTRACTOR will provide invoices to the degree of detail necessary to resolve any reasonable review, examination, inquiry, or audit by HHSC or any other responsible authority.



(c) Invoices for optional services and components must be submitted after such services or components are performed or delivered or in accordance with a payment schedule developed by mutual agreement between the Parties.

**Section 10.08 *Time and manner of payment.***

(a) HHSC will pay all fees and charges to CONTRACTOR on a monthly basis. The first payment to CONTRACTOR will not occur prior to the second month of CHIP program operation (“Program Operation”).

Payments for Services and Deliverables under the Agreement will be made in accordance with the Texas Prompt Payment Act, [Chapter 2251](#), Government Code. In the event HHSC disputes payment of an invoice for purposes of enforcing a remedy or obtaining set-off against payments due, HHSC may limit payments in accordance with [Article 14](#) of this Agreement.

**Section 10.09 *Rights of set-off.***

(a) *General right of set-off.*

With respect to any undisputed amount which a Party in good faith determines should be reimbursed to it or is otherwise payable to it by the other Party pursuant to this Agreement, the Party seeking the set-off may deduct the entire amount owed against the charges otherwise payable or expenses owed to it under this Agreement until such time as the entire amount determined to be owed has been paid.

(b) *Duty to make payments.*

HHSC will be relieved of its obligation to make any payments to the CONTRACTOR until such time as all such amounts have been credited to HHSC.

**Section 10.10 *Expenses.***

Except as provided in its cost Proposal, all other expenses (including travel and travel-related expenses) incurred by the CONTRACTOR in connection with its provision of the Services or Deliverables will not be reimbursed by HHSC unless agreed upon by HHSC.

**Section 10.11 *Disputed fees.***

(a) If HHSC disputes payment of all or any portion of a fee from the CONTRACTOR, HHSC will notify the CONTRACTOR of such dispute and both Parties will attempt in good faith to resolve the dispute.

(b) HHSC will not be required to pay any disputed portion of a CONTRACTOR fee unless and until the dispute is resolved and in accordance with the resolution of the dispute. Notwithstanding any such dispute, the CONTRACTOR must continue to perform the

Services and produce Deliverables in compliance with the terms of this Agreement pending resolution of such dispute so long as all undisputed amounts continue to be paid to CONTRACTOR.

**Section 10.12 *Restriction on assignment of fees.***

During the term of the Agreement CONTRACTOR may not, directly or indirectly, assign to any third party any beneficial or legal interest of CONTRACTOR in or to any payments to be made by HHSC pursuant to this Agreement without the approval of HHSC.

**Section 10.13 *Liability for taxes.***

HHSC is not responsible in any way for the payment of any Federal, state or local taxes related to or incurred in connection with the Services or Deliverables or this Agreement. CONTRACTOR must pay and discharge any and all such taxes, including any penalties and interest.

**Section 10.14 *Liability for employment-related charges and benefits.***

CONTRACTOR will perform work under this Agreement as an independent contractor and not as agent or representative of HHSC. CONTRACTOR is solely and exclusively liable for all taxes and employment-related charges incurred in connection with the performance of this Agreement. HHSC will not be liable for any employment-related charges or benefits of CONTRACTOR, such as workers compensation benefits, unemployment insurance and benefits, or fringe benefits.

**Section 10.15 *Liability for overtime compensation.***

CONTRACTOR will be solely responsible for any obligations of overtime pay due employees.

**Article 11. DISCLOSURE AND CONFIDENTIALITY OF INFORMATION.**

**Section 11.01 *Confidentiality.***

(a) CONTRACTOR and all subcontractors under this Contract shall treat all information which is obtained through performance under this Agreement as confidential information to the extent that confidential treatment is provided under law and regulations, and shall not use any information so obtained in any manner except as necessary to the proper discharge of obligations and securing of rights hereunder.

(b) CONTRACTOR will have a system in effect to protect all records and all other documents deemed confidential by law which are maintained in connection with the activities funded under this Agreement. Any disclosure or transfer of confidential

information by CONTRACTOR, including information required by HHSC, will be in accordance with applicable law.

(c) In addition to the requirements expressly stated in this Article 11, CONTRACTOR will comply with any policy, rule, or reasonable requirement of HHSC that relates to the safeguarding or disclosure of information relating to CHIP members, CONTRACTOR's operations, or the Services performed by CONTRACTOR under this Agreement.

#### **Section 11.02 Requests for public information.**

(a) HHSC agrees that it will promptly notify the CONTRACTOR of a request for disclosure of public information that relates to information or data to which CONTRACTOR has a proprietary or commercial interest. HHSC agrees to deliver a copy of the request for public information to the CONTRACTOR.

(b) With respect to any confidential information which is the subject of a request for disclosure, the CONTRACTOR is required to provide a written explanation of specific reasons why the requested information is confidential or otherwise excepted from required public disclosure under law. HHSC shall, in its sole discretion, determine the appropriate response to the request for information.

#### **Section 11.03 Publicity.**

(a) Except as provided in paragraph (b) below, CONTRACTOR shall not use the name of HHSC, the State of Texas, or any other state agency, or refer to HHSC or any such agency directly or indirectly in any media release, public announcement, or public disclosure relating to this Agreement or its subject matter, including, but not limited to, in any promotional or marketing materials, customer lists, or business presentations (other than proposals submitted to the State of Texas, an administrative agency of the State of Texas, or a governmental agency of another state or the federal government).

(b) CONTRACTOR may publish, at its sole expense, results of CONTRACTOR performance under this Agreement with HHSC's prior review and approval, which HHSC may exercise at its sole discretion. Any publication (written, visual, or sound) shall acknowledge the support received from HHSC and any federal agency, as appropriate. CONTRACTOR shall provide HHSC at least three (3) copies of any such publication prior to public release. CONTRACTOR shall provide additional copies at the request of HHSC.

#### **Section 11.04 Attorney-Client Privilege.**

(a) CONTRACTOR acknowledges that HHSC asserts that Privileged Work Product may be prepared in anticipation of litigation and that CONTRACTOR is performing the Services in respect of Privileged Work Product as an agent of HHSC, and that all matter related thereto is protected from disclosure by the Texas Rules of Civil Procedure, Texas Rules of Evidence, Federal Rules of Civil Procedure, or Federal Rules of Evidence.

(b) HHSC will notify CONTRACTOR of any Privileged Work Product to which CONTRACTOR has or may have access. After the CONTRACTOR is notified or otherwise becomes aware that such documents, data, database, or communications are Privileged Work Product, only CONTRACTOR personnel for whom such access is necessary for the purposes of providing the Services may have access to Privileged Work Product.

(c) Should CONTRACTOR ever be notified of any judicial or other proceeding seeking to obtain access to Privileged Work Product, CONTRACTOR shall

(1) Immediately provide notice in accordance with [Section 4.04](#) of this Agreement; and

(2) Use all reasonable efforts to resist providing such access.

(d) If CONTRACTOR resists disclosure of Privileged Work Product in accordance with subsection (c) of this [Section 11.04](#), HHSC will, to the extent authorized under Civil Practices and Remedies Code or other applicable state law, have the right and duty to represent CONTRACTOR in such resistance or to select and compensate counsel to so represent CONTRACTOR or to reimburse CONTRACTOR for reasonable attorneys' fees and expenses incurred in resisting such access.

(e) If CONTRACTOR is ultimately required, pursuant to an order of a court of competent jurisdiction, to produce documents, disclose data, or otherwise act in contravention of the confidentiality obligations imposed in this Agreement, or otherwise with respect to maintaining the confidentiality, proprietary nature, and secrecy of Privileged Work Product, CONTRACTOR will not be liable for breach of such obligation.

## **Article 12. SUBCONTRACTING AND THIRD PARTY RELATIONSHIPS**

### **Section 12.01 *General limitations on the employment of subcontractors.***

Except as and to the extent HHSC may agree otherwise in writing, CONTRACTOR will not subcontract its obligations under this Agreement, other than those subcontractors identified in CONTRACTOR's Proposal and approved by HHSC, except as provided in this [Article 12](#).

### **Section 12.02 *Prior notification of intention to subcontract the Services.***

(a) This [Section 12.02](#) applies to any subcontract executed by CONTRACTOR that has a value of \$100,000 or higher for performance of any portion of the Services.

(b) Subject to [Section 12.04](#) of this Agreement, prior to entering into a subcontract with a third party and following notice to HHSC of CONTRACTOR's intent to enter into such a subcontract, HHSC may require CONTRACTOR to:

(1) Specify the components of the Services affected, the scope and amount of the proposed subcontract between CONTRACTOR and such third party, and the identity and qualifications of such third party;

(2) Include in the subcontract between CONTRACTOR and such third party such provisions of this Agreement as HHSC reasonably deems necessary and appropriate under the circumstances as flowdown provisions;

(3) Include in the subcontract between CONTRACTOR and such third party the right for CONTRACTOR to terminate such subcontract under the following circumstances:

(A) In the event of materially deficient performance on the part of such third party;

(B) Where HHSC has communicated in writing good faith doubts concerning such third party's ability to render future performance because of changes in ownership, management, financial condition, or otherwise and CONTRACTOR in all due diligence concurs in HHSC's reservations; or

(C) Where there have been material misrepresentations by or concerning such third party.

**Section 12.03 Subcontracts for routine, ordinary, and non-material services.**

(a) CONTRACTOR may, in the ordinary course of business, subcontract for third party services or products that:

(1) Are not dedicated to HHSC;

(2) Are not material to a particular function constituting a part of the Services;

(3) Do not result in a material change in the way CONTRACTOR conducts its business; and

(4) Do not adversely affect HHSC or the State of Texas, whether in performance of or charges for the Services or otherwise.

(b) If HHSC expresses concerns to CONTRACTOR about such subcontract, CONTRACTOR must discuss such concerns with HHSC and work in good faith to resolve HHSC's concerns on a mutually acceptable basis.

**Section 12.04 Emergencies.**

(a) Where a bona fide emergency that materially affects the Services or when circumstances otherwise warrant immediate action by CONTRACTOR to subcontract with third parties, CONTRACTOR may, after using its best efforts to comply with the notice

requirement set forth in [Section 12.02](#), enter into subcontracts with such third parties without prior notice to HHSC of CONTRACTOR's intent to enter into such a subcontract.

(b) The scope and duration of subcontract entered into by CONTRACTOR under this [Section 12.04](#) must be narrowly tailored to address the emergency or the circumstances warranting such action. CONTRACTOR must otherwise use its best efforts to comply with [Section 12.01](#) and [Section 12.02](#) and upon request by HHSC, shall provide the information described in [Section 12.02](#).

**Section 12.05 *Approved subcontractors.***

Subject to the other provisions of this [Article 12](#), HHSC expressly consents to CONTRACTOR's use of the subcontractors designated in its Proposal for the provision of the Services specified in CONTRACTOR's Proposal (the "[Approved Subcontractors](#)").

**Section 12.06 *Responsibility for subcontractors.***

(a) CONTRACTOR will remain fully responsible for obligations, services and functions performed by its subcontractors to the same extent as if such obligations, services and functions were performed by CONTRACTOR employees and for purposes of this Agreement such work shall be deemed work performed by CONTRACTOR.

(b) CONTRACTOR shall be HHSC's sole point of contact regarding the Services, including with respect to payment. HHSC may require that a subcontractor and CONTRACTOR execute an agreement that designates CONTRACTOR as the subcontractor's payment agent with respect to HHSC.

(c) CONTRACTOR must not disclose Confidential Information of HHSC or the State of Texas to a subcontractor unless and until such subcontractor has agreed in writing to protect the confidentiality of such Confidential Information in the manner required of CONTRACTOR under this Agreement.

(d) CONTRACTOR must identify any subcontractor that is a newly-formed subsidiary or entity, whether or not an affiliate of CONTRACTOR, substantiate the proposed subcontractor's ability to perform the subcontracted Services, and certify to HHSC that no loss of Service will occur as a result of the performance of such subcontractor.

**Section 12.07 *Retention of critical third party providers.***

(a) Subject to [Section 12.01](#) through [Section 12.06](#) of this Agreement, CONTRACTOR must continue to use existing third party providers of services who are believed by HHSC to have knowledge, either technical or business, not easily replaceable and critical to CONTRACTOR in providing the Services to the State.

(b) Such third party providers, if any, will be identified by HHSC at least 180 days prior to expiration of the Initial Term of this Agreement.

(c) Upon making a determination that continued use of any third party provider is not in the best interests of the State, subject to prior written consent by HHSC, CONTRACTOR may eliminate such provider or diminish such provider's level of effort.

**Section 12.08 *Replacement of subcontractors.***

(a) Upon reasonable notice to CONTRACTOR in accordance with [Section 5.04](#) of this Agreement and upon CONTRACTOR's inability to cure or resolve the matters identified by HHSC to HHSC's satisfaction, HHSC may request CONTRACTOR to replace any subcontractor without penalty to HHSC.

(b) The replacement of a subcontractor may be requested for subcontractor non-performance or substantial substandard performance.

(c) CONTRACTOR will use its best efforts to replace the subcontractor whose replacement is requested by HHSC under this [Section 12.08](#) with a qualified substitute subcontractor with no or minimal disruption in the performance of the Services. If a suitable replacement cannot be identified within a reasonable time, CONTRACTOR will so notify HHSC and cooperate with HHSC to ensure continuation of the Services without interruption and achievement of any applicable performance measure or requirement of this Agreement, whether by CONTRACTOR or the subcontractor whose replacement was requested by HHSC.

**Section 12.09 *Availability of Approved Subcontractors following termination or expiration of Agreement.***

Upon expiration or termination of this Agreement for any reason, HHSC and/or the State will have the right to enter into direct agreements with any of the Approved Subcontractors. CONTRACTOR agrees that its arrangements with Approved Subcontractors will not prohibit or restrict such subcontractors from entering into direct agreements with HHSC and/or the State.

**Section 12.10 *Third Party Consents for Performance of Services.***

CONTRACTOR will obtain all consents or approvals that are necessary to allow CONTRACTOR and CONTRACTOR's subcontractors to perform the Services, including consents related to use or transfer of State assets, State Software, State Equipment or third party services provided to the State.

CONTRACTOR shall obtain such consents in a timely manner so as to avoid any delay or interruption in performance of the Services. CONTRACTOR shall be responsible for any payments directly or indirectly related to or required in connection with obtaining such consents.

**Section 12.11 *Third Party Consents for Termination Assistance.***

CONTRACTOR shall ensure that all consents or approvals to allow CONTRACTOR and CONTRACTOR's Approved Subcontractors to provide the Termination Assistance required in this Agreement have been obtained, on a contingent basis, in advance and will be provided by the applicable third parties at no cost or delay to HHSC.

### **Article 13. SYSTEM STANDARDS AND PROPERTY RIGHTS**

#### **Section 13.01 *Contractor's responsibility for software.***

(a) As part of the Services performed by CONTRACTOR under this Agreement, CONTRACTOR will be responsible for providing, obtaining, developing, and/or maintaining the following software:

(1) Software required to perform the Services other than Systems Software ("Applications Software");

(2) Software developed and owned by CONTRACTOR prior to the Effective Date for a purpose other than the sole purpose of performing the Services under this Agreement ("CONTRACTOR Proprietary Software");

(3) Software that is licensed by CONTRACTOR from a third party to perform the Services ("CONTRACTOR Third Party Software"); and

(4) Software developed and owned by CONTRACTOR prior to or following the Effective Date exclusively for the purpose of performing the Services under this Agreement ("CONTRACTOR Developed Software").

(b) To the extent provided by HHSC or the State, CONTRACTOR will be responsible for utilizing, protecting, returning upon request, installing and/or uninstalling State-provided upgrades to software owned, developed or used by the State in the performance of tasks associated with the Services ("State Software"). State Software includes software purchased or obtained by the State under license from another party ("State Third Party Software").

#### **Section 13.02 *Applications Software.***

As part of the Services, CONTRACTOR will have administrative, operational, maintenance, and financial responsibility for all software acquired, developed, and utilized by CONTRACTOR to provide the Services other than System Software and State Software.

#### **Section 13.03 *Applications Software maintenance.***

As part of the Services, CONTRACTOR will maintain all Applications Software, which duties will include the following tasks or functions:

(1) Preventive and corrective maintenance to correct defects and failures in the Applications Software;



(2) Changes to support the day-to-day operations of the State's business as may be agreed to by HHSC and CONTRACTOR;

(3) Installing, testing, and maintaining upgrades to the Applications Software;

(4) Modifying the Applications Software to the extent reasonably necessary to comply with the State's regulatory requirements;

(5) Maintaining all current interfaces and additional interfaces required to perform the Services;

(6) Handling all reasonable requests and inquiries with respect to the Applications Software that are referred by HHSC or its designee; and

(7) Changes to the Applications Software necessary due to changes to the Systems Software.

**Section 13.04 *CONTRACTOR Proprietary Software.***

(a) CONTRACTOR Proprietary Software is and will remain the exclusive property of CONTRACTOR and HHSC will have no rights or interests in the CONTRACTOR Proprietary Software except as described in this Section 13.04.

(b) Prior to using any CONTRACTOR Proprietary Software to provide any of the Services other than CONTRACTOR Proprietary Software included in CONTRACTOR's Proposal, CONTRACTOR must notify HHSC that it intends to use CONTRACTOR Proprietary Software and obtain HHSC's consent to such use. If HHSC does not consent to such use, CONTRACTOR shall recommend a functionally equivalent alternative that CONTRACTOR shall use upon HHSC's consent.

(b) As part of the Services, CONTRACTOR shall during the Term:

(1) Use the CONTRACTOR Proprietary Software set forth in CONTRACTOR's Proposal and such other software as HHSC and CONTRACTOR may agree upon from time to time are required to provide the Services;

(2) Make available to the State through HHSC such CONTRACTOR Proprietary Software as agreed to by CONTRACTOR and HHSC for use by the State solely in connection with the Services; and

(3) Deliver to HHSC, if requested by HHSC, a copy of the CONTRACTOR Proprietary Software for archival purposes no more than once during every calendar quarter after the Effective Date.

(c) Upon the expiration of this Agreement or the termination of this Agreement for any reason, HHSC's rights to the CONTRACTOR Proprietary Software will be as follows:

(1) Unless otherwise agreed to between the Parties as part of a Transition Plan, CONTRACTOR will provide HHSC or its designee a license to use CONTRACTOR Proprietary Software and provide technical and professional support and maintenance at rates negotiated between the Parties;

(2) HHSC will have use of the CONTRACTOR Proprietary Software at no cost to HHSC during the negotiations of the rates specified in paragraph (c)(1) of this Section 13.04.

#### **Section 13.05 *CONTRACTOR Third Party Software.***

(a) CONTRACTOR may utilize Software that is licensed from a third party in order to provide the Services (the “CONTRACTOR Third Party Software”). The CONTRACTOR Third Party Software shall be and shall remain the exclusive property of CONTRACTOR's third party licensors and HHSC shall have no rights or interests in the CONTRACTOR Third Party Software except as described in this Section 13.05.

(b) As part of the Services, CONTRACTOR shall during the term of this Agreement:

(1) Use the CONTRACTOR Third Party Software identified in CONTRACTOR's Proposal and such other CONTRACTOR Third Party Software as HHSC and CONTRACTOR may agree to add from time to time, as may be required to provide the Services;

(2) Make available to HHSC such CONTRACTOR Third Party Software for use by the State solely in connection with the Services; and

(3) Deliver to HHSC, upon HHSC's request, no more than once during every quarter after the Effective Date, to the extent permissible under the applicable agreements for the CONTRACTOR Third Party Software, a copy of the CONTRACTOR Third Party Software (including related source code) for archival purposes only.

(c) Upon the expiration of this Agreement or the termination of this Agreement for any reason, HHSC's rights to the CONTRACTOR Third Party Software shall be as follows:

(1) Unless otherwise agreed to by the Parties as part of a Transition Plan, CONTRACTOR will deliver or obtain appropriate licenses to allow HHSC, its designee, or CONTRACTOR to operate CONTRACTOR Third Party Software following the Expiration at such terms as are agreed to by the Parties.

(2) HHSC will have use of the CONTRACTOR Proprietary Software at no cost to HHSC during the negotiations of the rates specified in paragraph (c)(1) of this Section 13.05.

#### **Section 13.06 *System Standards.***

(a) CONTRACTOR agrees that the automated system utilized by CONTRACTOR in the performance of the Services to the HHSC shall meet or exceed:

(1) All pertinent state of Texas and/or federal performance criteria; and

(2) Any necessary certification requirements for any federal financial participation pursuant to this Article.

(b) CONTRACTOR agrees that automated data files to be exchanged between the parties to this Agreement shall remain as defined by HHSC unless modified by mutual agreement.

**Section 13.07 *Use rights of computer programs, documentation, and related items.***

HHSC or its designee will have the rights to use of Applications Software and System Software, whether CONTRACTOR Proprietary Software, CONTRACTOR Developed Software, and CONTRACTOR Third Party Software, as specified in [Section 13.04](#), [Section 13.05](#) and [Section 13.09](#) of this Agreement.

**Section 13.08 *State Software.***

(a) HHSC hereby grants to CONTRACTOR solely to provide the Services, a non-exclusive, non-transferable right to:

(1) Use;

(2) Copy for archival purposes; and

(3) To the extent permitted by the licenses or leases in respect of the State Third Party Software, modify the State Software.

(b) CONTRACTOR may not, in the exercise of right conferred regarding State Software under this [Section 13.08](#):

(1) Decompile the State Software;

(2) Disassemble the State Software; or

(3) Otherwise reverse engineer the State Software in any manner.

(c) As of the Effective Date, HHSC will, at no cost to CONTRACTOR, provide CONTRACTOR with access to the State Software in the form in use by the State as of the Effective Date.

(d) Subject to limitations imposed on the use of subcontractors under [Article 12](#) of this Agreement, CONTRACTOR may sublicense to CONTRACTOR's subcontractors the right to have access to and operate the State Software as may be necessary in connection with the provision of the Services.

(e) Upon the expiration of this Agreement or the termination of this Agreement for any reason, CONTRACTOR's rights to the State Software will expire and CONTRACTOR must make reasonable arrangements acceptable to HHSC to uninstall, return, replace, or destroy the State Software provided to CONTRACTOR under this [Section 13.08](#).

#### **Section 13.09 *CONTRACTOR Developed Software***

(a) CONTRACTOR may develop Software by original authorship or through contracts with third parties as part of and/or in order to perform the Services (the "CONTRACTOR Developed Software").

(b) The CONTRACTOR Developed Software shall be and will remain the exclusive property of HHSC.

(c) CONTRACTOR will provide support, upgrade, and maintain the CONTRACTOR Developed Software during the term of this Agreement and will provide continuing support, upgrades, or assistance following the Expiration Date at rates and under terms negotiated between the Parties.

#### **Section 13.10 *Changes and Upgrades to the System.***

(a) Except as may be approved by HHSC, CONTRACTOR may not make any changes or modifications to the State Software or the CONTRACTOR Developed Software.

(b) Except as may be approved by HHSC, any changes or modifications to the CONTRACTOR Proprietary Software or CONTRACTOR Developed Software made by CONTRACTOR pursuant to this Agreement must not have an adverse effect on the functionality or performance of the System except as may be necessary on an emergency basis to maintain the continuity of the Services.

#### **Section 13.11 *Documentation.***

Except as may be set forth in [Section 13.04](#) and [Section 13.09](#) with respect to the CONTRACTOR Proprietary Software and CONTRACTOR Developed Software, all software documentation shall be and will remain the exclusive property of CONTRACTOR.

#### **Section 13.12 *Data and Error Correction***

(a) *Ownership of State Data.*

The State Data is and will remain the property of the State and may not be:

(1) Used by CONTRACTOR other than in connection with providing the Services;

(2) Disclosed, sold, assigned, leased, or otherwise provided to third parties by CONTRACTOR (except as may be provided for in this Agreement under, for

example, [Article 9](#) of this Agreement and subject to [Article 11](#) of this Agreement); or

(3) Commercially exploited by or on behalf of CONTRACTOR, its employees, subcontractors, or agents.

(b) *Correction of Errors*

(1) As part of the Services, CONTRACTOR shall promptly correct any errors or inaccuracies in the State Data and the any reports that are:

(A) Caused by CONTRACTOR; or

(B) Identified by HHSC or its designee as requiring prompt correction.

(2) HHSC will be responsible for:

(A) The accuracy and completeness of data provided to CONTRACTOR from the State; and

(B) Any errors or inaccuracies in and with respect to data obtained from CONTRACTOR because of any inaccurate or incomplete data provided through or on behalf of HHSC.

**Section 13.13 *Return of data***

(a) At the request of HHSC or the completion of any Transitional Assistance, CONTRACTOR will:

(1) Promptly return to HHSC or the State all or a portion of the State Data in the format and on the media in use as of the date of the request; and

(2) Erase or destroy all or a portion of the State Data in CONTRACTOR's possession prior to the cessation of all Transitional Assistance.

(b) Archival tapes containing any State Data shall be used solely for data back-up purposes as referenced in [Section 7.15](#) of this Agreement.

**Section 13.14 *Disaster recovery.***

As part of the Services, CONTRACTOR will:

(1) Develop, submit to HHSC for its approval and, upon the HHSC's approval, implement and manage disaster recovery plans for the System in accordance with [Section 7.15\(a\)\(4\)](#) of this Agreement;

(2) Upon HHSC's request, certify to the State that the disaster recovery plans are fully operational; and

(3) Upon discovery by CONTRACTOR, immediately provide HHSC with a notice of a Disaster and implement the disaster recovery plans upon the occurrence of a Disaster at a Service Location or otherwise affecting the provision or receipt of the Services. CONTRACTOR must reinstitute the affected Services within the time period specified in [Section 7.15\(a\)\(4\)\(B\)](#) of this Agreement. In the event of a Disaster, CONTRACTOR shall not increase its charges under this Agreement.

#### **Section 13.15 *Data Center operations.***

(a) CONTRACTOR will maintain data center operations at the central facility identified in its Proposal and referenced in [Section 7.05\(a\)](#) of this Agreement.

(b) If determined necessary by HHSC or another appropriate state authority, CONTRACTOR will cooperate with HHSC to obtain a waiver of state laws requiring use of the West Texas Disaster Recovery Center as specified in [Section 7.15\(b\)](#) of this Agreement.

#### **Section 13.16 *Reporting requirements.***

CONTRACTOR will supply all data, reports, or information in the form and in the manner specified in the RFP or as may reasonably be required from time to time in accordance with statutory, regulatory, or administrative procedures or requirements.

### **Article 14. REMEDIES AND DISPUTES.**

#### **Section 14.01 *Understanding and expectations.***

(a) The CONTRACTOR agrees and understands that HHSC may pursue contractual remedies for both programmatic and financial noncompliance. HHSC, in its discretion, may impose or pursue one or more remedies for each item of noncompliance and will determine sanctions on a case-by-case basis. HHSC's pursuit or non-pursuit of a tailored administrative remedy shall not constitute a waiver of any other remedy that HHSC may have at law or equity.

(b) As described in the Request for Proposals, the CHIP program represents a comprehensive and aggressive effort to provide adequate health care to uninsured children by providing affordable insurance to their families. [Article 2](#) of this Agreement also describes HHSC's objective to establish a flexible and responsive relationship with CONTRACTOR. Accordingly, the remedies described in this Article 14 are directed to CONTRACTOR's timely and responsive performance of the Services and production of Deliverables.

#### **Section 14.02 *Administrative remedies.***

(a) *CONTRACTOR responsibility for improvement.*

(1) HHSC expects CONTRACTOR's performance to continuously meet or exceed performance criteria over the term of this Agreement. Accordingly, CONTRACTOR will be responsible for ensuring that performance for a particular activity or result described in its Proposal or the RFP that falls below the expectations identified in CONTRACTOR's Proposal, the RFP, or this Agreement must improve within thirty (30) days of written notice from HHSC regarding the deficiency, in accordance with the procedures specified in subsection (b), (c), and (d) of this Section 14.02.

(2) In keeping with HHSC's approach to tailored remedies, HHSC will administer the remedies specified in this Article 14 in accordance with the following progression of remedies:

(A) Notification of deficiency and opportunity to cure a non-material deficiency in accordance with subsection (b) of this Section 14.02;

(B) Application of liquidated damages in accordance with Section 14.03 of this Article 14 and, at HHSC's sole discretion, either separately or in conjunction with liquidated damages:

(i) A corrective action plan in accordance with subsection (c) of this Section 14.02;

(ii) A request for modification of this Agreement following assessment of liquidated damages in accordance with Section 14.05 of this Article 14;

(C) Assessment of additional remedies as specified in subsection (d) of this Section 14.02; and

(D) Termination of this Agreement in accordance with Section 14.09 of this Article 14.

(3) The prioritization of remedies described in subsection (a)(2) of this Section 14.02 will not limit:

(A) HHSC's right to terminate this agreement under Section 14.08 or Section 14.10 of this Article 14;

(B) CONTRACTOR's right to terminate under Section 14.11 of this Article 14; or

(C) The Parties' ability to terminate this Agreement under Section 14.07 of this Article 14.

(b) *Notification and interim response.*

(1) HHSC will notify CONTRACTOR in writing of specific areas of CONTRACTOR performance that fail to meet performance expectations, standards, or schedules, but which, in the determination of HHSC, do not result in a material delay in the implementation or operation of the CHIP administrative services. CONTRACTOR will, within three (3) business days of receipt of written notice of a non-material deficiency, provide the HHSC Project Manager a written response that:

(A) Explains the reasons for the deficiency, CONTRACTOR's plan to address or cure the deficiency, and the date and time by which the deficiency will be cured; or

(B) If CONTRACTOR disagrees with HHSC's findings, its reasons for disagreeing with HHSC's findings.

(2) CONTRACTOR's proposed cure of a non-material deficiency is subject to the approval of HHSC. CONTRACTOR's repeated commission of non-material deficiencies or repeated failure to resolve any such deficiencies may be regarded by HHSC as a material deficiency and entitle HHSC to pursue any other remedy provided in this Agreement or any other appropriate remedy HHSC may have at law or equity.

(c) *Corrective Action Plan.*

(1) In the event HHSC assesses a liquidated damage as provided in this Article 14, HHSC may require the CONTRACTOR to submit to HHSC a detailed written plan (the "Corrective Action Plan") to correct or resolve the deficiency or event causing the assessment of the liquidated damage. The Corrective Action Plan must provide a detailed explanation of the reasons for the cited deficiency, the CONTRACTOR's assessment or diagnosis of the cause, and a specific proposal to cure or resolve the deficiency. The Corrective Action Plan must be submitted within ten (10) business days following the request for the plan by HHSC and is subject to approval by HHSC, which approval will not unreasonably be withheld.

(2) Notwithstanding the submission and acceptance of a Corrective Action Plan, CONTRACTOR remains responsible for achieving all written performance criteria. The acceptance of a Corrective Action Plan under this Section 14.02 will not excuse prior substandard performance, relieve CONTRACTOR of its duty to comply with performance standards, or prohibit HHSC from assessing additional liquidated damages or pursuing other appropriate remedies for continued substandard performance.



(d) *Additional remedies.*

(1) HHSC at its own discretion may impose one or more the following remedies for each item of noncompliance and will determine the scope and severity of the remedy on a case-by-case basis:

(A) Assess liquidated damages in accordance with [Section 14.03](#) and deduct such damages against payments to CONTRACTOR as set-off in accordance with [Section 14.04](#);

(B) Conduct accelerated monitoring of the CONTRACTOR. Accelerated monitoring means more frequent or more extensive monitoring will be performed by HHSC than would routinely be accomplished;

(C) Require additional, more detailed, financial and/or programmatic reports to be submitted by CONTRACTOR in accordance with [Article 9](#) of this Agreement; or

(D) Decline to renew this Agreement.

(2) For purposes of this Agreement, an item of noncompliance means a specific action of CONTRACTOR that:

(A) Violates a provision of this Agreement;

(B) Fails to meet an agreed measure of performance;

(C) Represents a failure of CONTRACTOR to be reasonably responsive to a reasonable request of HHSC for information, assistance, or support within the timeframe specified by HHSC.

(3) HHSC will formally notify CONTRACTOR of the imposition of an administrative remedy in writing in accordance with paragraph (b) of [this Section 14.02](#), with the exception of accelerated monitoring, which may be unannounced. CONTRACTOR is required to file a written response to in accordance with paragraph (b) of this [Section 14.02](#).

(4) The Parties agree that a state or federal statute, rule, regulation or federal guideline will prevail over the provisions of this [Section 14.02](#) unless the statute, rule, regulation, or guidelines can be read together with this [Section 14.02](#) to give effect to both.

(e) *Informal review of administrative remedies.*

CONTRACTOR may request an informal review of the imposition of the foregoing remedies in accordance with [Section 14.11](#) of this [Article 14](#) within ten (10) business days of receipt of written notification of the imposition of a remedy by HHSC.

### **Section 14.03 Liquidated damages.**

The liquidated damages prescribed in this Section 14.03 are not intended to be in the nature of a penalty, but are intended to be reasonable estimates of HHSC's projected financial loss and damage resulting from the CONTRACTOR's nonperformance, including financial loss as a result of project delays.

Accordingly, in the event CONTRACTOR fails to perform in accordance with this Agreement, HHSC may assess liquidated damages as provided in this Section 14.03.

#### *(a) Failure to provide contracted services or support.*

HHSC may assess a liquidated damage in accordance with the values specified in the document entitled "[Tailored Remedies Matrix](#)," which is attached to this Agreement as [Exhibit D](#) and incorporated into this Agreement for all purposes as if it were set forth word for word in this Agreement, for any failure of CONTRACTOR to perform any of the Services as specified in the Tailored Remedies Matrix. The liquidated damages specified in the Tailored Remedies Matrix will be applied in accordance with the assumptions and rules specified in the document entitled "[Assumptions Governing Application of Liquidated Damages](#)," dated December 22, 1999, and attached to this Agreement as [Exhibit E](#) and incorporated into this Agreement for all purposes as if it were set forth word for word in this Agreement.

#### *(1) Maximum damages.*

Liquidated damages assessed pursuant to this paragraph shall not, in any single month, exceed 25% of the fee due CONTRACTOR for that month. However, if CONTRACTOR fails to perform any Service or combination of Services, and such failure represents a budgeted sum greater than 25% of the fee due CONTRACTOR for that month, HHSC may terminate the Agreement in accordance with this Article 14.

#### *(2) CONTRACTOR responsibility for associated costs.*

If HHSC terminates this Agreement pursuant to paragraph (a)(1) of this Section 14.03, CONTRACTOR will be responsible to HHSC for all costs incurred by HHSC, the State of Texas or any of its administrative agencies to replace the CONTRACTOR. These costs include, but are not limited to, the costs of procuring a substitute vendor following termination of this Agreement and the cost of any claim or litigation that, as determined by a court of competent jurisdiction, is reasonably attributable to CONTRACTOR's failure to perform any Service in accordance with the RFP, CONTRACTOR's Proposal, and this Agreement.

### **Section 14.04 Method of collection.**

HHSC may elect to assess a liquidated damage directly to CONTRACTOR, or it may deduct amounts assessed as liquidated damages as set-off against payments then due to

CONTRACTOR for the Services or Deliverables or which become due at any time thereafter.

**Section 14.05 *Modification of Agreement in the event of remedies.***

As provided in [Section 8.01\(b\)](#) of this Agreement, HHSC may propose a modification of this Agreement in response to the imposition of a remedy under this [Article 14](#). Any modifications under this [Section 14.05](#) must be reasonable, limited to the matters causing the exercise of a remedy, and in writing. CONTRACTOR must negotiate such proposed modifications in good faith.

**Section 14.06 *Termination of Agreement.***

In addition to other provisions of [Article 14](#) of this Agreement allowing termination, this Agreement will terminate upon full performance of all requirements contained in this Agreement, unless extended in accordance with [Article 4](#) of this Agreement, or terminated sooner under the terms of [Section 14.07](#) through [Section 14.10](#) of this Agreement. Prior to completion of the Initial Term and any extensions or renewal thereof, all or a part of this Agreement may be terminated for any of the following reasons:

**Section 14.07 *Termination by mutual agreement of the Parties.***

This Agreement may be terminated by mutual agreement of the Parties. Such agreement must be in writing.

**Section 14.08 *Termination in the best interest of the State.***

This Agreement may be terminated by HHSC at any time when, in the sole determination of HHSC, termination is in the best interests of the State of Texas.

**Section 14.09 *Termination for Cause.***

HHSC reserves the right to terminate this Agreement, in whole or in part, upon the following conditions:

- (a) *Assignment for the benefit of creditors, appointment of receiver, or inability to pay debts.*

HHSC may terminate this Agreement if CONTRACTOR:

- (1) Makes an assignment for the benefit of its creditors;
- (2) Admits in writing its inability to pay its debts generally as they become due; or

(3) Consents to the appointment of a receiver, trustee, or liquidator of the CONTRACTOR or of all or any part of its property.

*(b) Judgment and execution.*

(1) HHSC may terminate this Agreement if judgment for the payment of money which is not covered by insurance is rendered by any court or governmental body against CONTRACTOR, and CONTRACTOR does not

(A) Discharge the judgment or provide for its discharge in accordance with the terms of the judgment;

(B) Procure a stay of execution thereof within 30 days from the date of entry thereof; or

(C) Perfect an appeal of such judgment and cause the execution of such judgment to be stayed during the appeal, providing financial such reserves as may be required under generally accepted accounting principles.

(2) The termination right granted in this paragraph (b) of this Section 14.09 is limited to payments of judgments or executions in excess of \$50,000.00 that:

(A) Relate directly or primarily to this Agreement; or

(B) In the sole discretion of HHSC, materially affect CONTRACTOR's ability to perform the Services in accordance with its duties under this Agreement.

(3) If a writ or warrant of attachment or any similar process is issued by any court against all or any material portion of the property of CONTRACTOR, and such writ or warrant of attachment or any similar process is not released or bonded within 30 days after its entry, HHSC may terminate this Agreement in accordance with this Section 14.06.

*(c) Failure to adhere to laws, rules, ordinances, or orders.*

HHSC may terminate this Agreement if a court of competent jurisdiction finds CONTRACTOR failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction and such violation prevents or substantially impairs performance of CONTRACTOR's duties under this Agreement.

*(d) Breach of confidentiality.*

HHSC may terminate this agreement if CONTRACTOR willfully or with gross negligence breaches a standard of confidentiality with respect to the Services provided under this Agreement.

(e) *Termination for insolvency.*

(1) HHSC may, by giving written notice of termination to CONTRACTOR, terminate this Agreement as of a date specified in such notice of termination if CONTRACTOR:

(A) Files for bankruptcy;

(B) Becomes or is declared insolvent, or is the subject of any proceedings related to its liquidation, insolvency or the appointment of a receiver or similar officer for it;

(C) Makes an assignment for the benefit of all or substantially all of its creditors; or

(D) Enters into a Agreement for the composition, extension, or readjustment of substantially all of its obligations.

(2) CONTRACTOR agrees to pay for all reasonable expenses of HHSC including the cost of counsel, incident to:

(A) The enforcement of payment of all obligations of the CONTRACTOR by any action or participation in, or in connection with a case or proceeding under chapters 7, 11, or 13 of the United States Bankruptcy Code, or any successor statute;

(B) A case or proceeding involving a receiver or other similar officer duly appointed to handle the CONTRACTOR's business; or

(C) A case or proceeding in a State court initiated by HHSC when previous collection attempts have been unsuccessful.

(f) *Termination for gifts and gratuities.*

(1) HHSC may terminate this Agreement on one (1) days' notice to the CONTRACTOR following the determination by a competent judicial or quasi-judicial authority and CONTRACTOR's exhaustion of all legal remedies that the CONTRACTOR, its employees, agents or representatives have either offered or given any thing of value to an officer or employee of HHSC or the State of Texas in violation of state law.

(2) CONTRACTOR must include a similar provision in each of its subcontracts and shall enforce this provision against a subcontractor who has offered or given any thing of value to any of the persons or entities described in this Section 14.09, whether or not the offer or gift was in the CONTRACTOR's behalf.

(3) Termination of a subcontract by CONTRACTOR pursuant to this provision will not be a cause for the assessment of a liquidated damage or termination of this Agreement unless CONTRACTOR fails to replace such terminated subcontractor within a reasonable time.

(4) For purposes of this section, a “thing of value” means any item of tangible or intangible property that has a monetary value of more than \$50.00 and includes, but is not limited to, cash, food, lodging, entertainment, and charitable contributions. The term does not include contributions to holders of public office or candidates for public office that are paid and reported in accordance with state and/or federal law.

**Section 14.10 *Termination for non-appropriation of funds.***

(a) Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by HHSC are at any time not forthcoming or are insufficient, through failure of any entity to appropriate funds or otherwise, then HHSC will have the right to terminate this Agreement at no additional cost and with no penalty whatsoever by giving prior written notice documenting the lack of funding.

(b) In such instance, unless otherwise agreed to by the Parties, this Agreement will terminate and become null and void on the last day of the fiscal period for which appropriations were received. HHSC will use all reasonable efforts to ensure appropriated funds are available.

**Section 14.11 *Termination in the event of HHSC’s failure to pay.***

In the event that HHSC fails to pay CONTRACTOR undisputed charges when due under the Agreement and fails to make such payment within sixty (60) days of receipt of written notice from the CONTRACTOR of the failure to make such payment, the CONTRACTOR may, by giving written notice to the HHSC, terminate this Agreement as of a date specified in the notice of termination.

**Section 14.12 *Notice of termination.***

(a) Each Party will provide written notice of termination of this Agreement under [Section 14.07](#), [Section 14.08](#), [Section 14.09](#), [Section 14.10](#), or [Section 14.11](#) of this Agreement at least 30 days prior to the intended date of termination unless an emergency exists.

(b) For purposes of this [Section 14.12](#), “emergency” means an unforeseen event of such immediacy, magnitude or severity that it requires the immediate action of a Party to correct or mitigate and which, if delayed, will result in substantial or catastrophic loss or damage.

**Section 14.13 *Extension of termination effective date.***

HHSC may extend the effective date of termination one or more times as it elects, in its sole discretion, provided that the total of all such extensions shall not exceed 90 calendar days following the original effective date of termination.

**Section 14.14 *Injunctive relief.***

Each Party acknowledges and agrees that, in the event of a breach or threatened breach of any of the provisions of this Agreement, such Party may have no adequate remedy in damages. Accordingly, each Party will be entitled to seek an injunction to prevent such breach or threatened breach. However, the specification of a particular legal or equitable remedy will not be construed as a waiver, prohibition, or limitation of any other legal or equitable remedies in the event of a breach of this Agreement.

**Section 14.15 *Payment and other provisions at Agreement termination.***

(a) If HHSC terminates this Agreement, HHSC will pay CONTRACTOR on the effective date of termination (or as soon as possible thereafter taking into account appropriation and fund accounting requirements) any undisputed amounts due for all completed, approved, and accepted Services or deliverables.

(b) HHSC further agrees to negotiate in good faith with CONTRACTOR to equitably adjust and settle any accrued or outstanding liabilities for any unaccepted Service or deliverable and Change Order that

(1) Is due or delivered prior to or upon Agreement termination;

(2) Is complete or substantially complete, or for which the CONTRACTOR can document to the satisfaction of HHSC substantial progress; and

(3) Benefits HHSC or the State of Texas, notwithstanding its unaccepted status.

(c) CONTRACTOR must provide HHSC all reasonable access to records, facilities, and documentation as is required to efficiently and expeditiously close out the Services under this Agreement.

**Section 14.16 *Rights and Obligations regarding Computer Programs, Systems and Data Files after Termination.***

The CONTRACTOR's rights and obligations with regard to any computer programs, systems and data files after termination are as set out at [Article 13](#) of this Agreement.

**Section 14.17 *Dispute resolution.***

(a) *General agreement of the Parties.*

The Parties mutually agree that the interests of fairness, efficiency, and good business practices are best served when the Parties employ all reasonable and informal means to resolve any dispute under this Agreement. The Parties express their mutual commitment to using all reasonable and informal means of resolving disputes including, but not limited to, the informal review of liquidated damage assessments under Section 14.02 of this Agreement, prior to invoking a remedy provided elsewhere in this Section 14.17.

(b) *Duty to negotiate in good faith.*

Any dispute that in the judgment of any Party to this Agreement may materially or substantially affect the performance of any Party will be reduced to writing and delivered to the other Party. The Parties must then negotiate in good faith and use every reasonable effort to resolve such dispute and the Parties shall not resort to any formal proceedings unless they have reasonably determined that a negotiated resolution is not possible. The resolution of any dispute disposed of by agreement between the Parties shall be reduced to writing and delivered to all Parties within ten (10) business days.

(c) *Claims for breach of Agreement.*

(1) *General requirement.* As required by Chapter 2260, Government Code, a claim for breach of this Agreement by CONTRACTOR must be resolved in accordance with the dispute resolution process established by HHSC in accordance with Chapter 2260, Government Code.

(2) *Negotiation of claims.* A claim for breach of this Agreement by CONTRACTOR that the Parties cannot resolve in the ordinary course of business or through the use of all reasonable and informal means must be submitted to the negotiation process provided in Chapter 2260, subchapter B, Government Code.

(A) To initiate the process, CONTRACTOR must submit written notice in accordance with Section 4.04 of this Agreement that specifically states that CONTRACTOR invokes the provisions of Chapter 2260, subchapter B, Government Code.

(B) Compliance by the contractor with Chapter 2260, subchapter B, Government Code, is a condition precedent to the filing of a contested case proceeding under Chapter 2260, subchapter C, of the Government Code.

(3) *Contested case proceedings.* The contested case process provided in Chapter 2260, subchapter C, Government Code, is CONTRACTOR's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by HHSC if the Parties are unable to resolve their disputes under subsection (c)(2) of this Section 14.17.

(A) Compliance with the contested case process provided in Chapter 2260, Subchapter C, Government Code, is a condition precedent to seeking consent to sue from the Texas Legislature under Chapter 107, Civil Practices & Remedies



Code. Neither the execution of this Agreement by HHSC nor any other conduct of any representative of HHSC relating to this Agreement shall be considered a waiver of the State's sovereign immunity to suit.

(4) *HHSC rules.* The submission, processing and resolution of the CONTRACTOR's claim is governed by the rules to be adopted by HHSC pursuant to Chapter 2260, Government Code.

(A) CONTRACTOR expressly acknowledges that, as of the Effective Date of this Agreement, HHSC has not adopted rules to implement the requirements of Chapter 2260, Government Code. CONTRACTOR expressly waives any claim regarding the absence of any such rules at the Effective Date.

(5) *CONTRACTOR's duty to perform.* Neither the occurrence of an event constituting an alleged breach of contract nor the pending status of any claim for breach of contract is grounds for the suspension of performance, in whole or in part, by CONTRACTOR of any duty or obligation with respect to the Services under this Agreement.

#### **Section 14.18 *Liability of contractor.***

CONTRACTOR will not be liable to HHSC for any loss, damages or liabilities attributable to or arising from:

(1) The failure of HHSC or any state agency or HHSC CONTRACTOR to perform a service or activity in connection with this Agreement; or

(2) CONTRACTOR's prudent and diligent performance of the Services in compliance with instructions given by HHSC in accordance with Section 2.06 (relating to implied authority), Section 4.04 (relating to notices), and Section 4.06 (relating to delegation of authority) of this Agreement.

### **Article 15. ASSURANCES AND CERTIFICATIONS**

#### **Section 15.01 *Lobbying.***

(a) In accordance with 31 U.S.C. § 1352 (§ 1352 of Public Law [P.L.] 101-121 effective December 22, 1989), CONTRACTOR is prohibited from using funds granted under this Agreement for lobbying Congress or any Federal agency in connection with a particular Agreement. CONTRACTOR agrees that none of the funds provided under this Agreement will be so used.

(b) In addition, if at any time a contract exceeds \$100,000, the law requires certification that none of the funds provided by HHSC to CONTRACTOR have been used for payment to lobbyists. CONTRACTOR certifies that it has not and will not use any funds provided under this Agreement for such prohibited purposes.

(c) Regardless of funding source, if a modification or amendment to this Agreement exceeds \$100,000, CONTRACTOR will provide at the request of HHSC a certification of the names of any and all registered lobbyists with whom CONTRACTOR has an agreement. CONTRACTOR agrees that it will provide this certification on a form provided by HHSC, along with the names of any lobbyists, if applicable, within 90 days of receipt of the executed Agreement.

#### **Section 15.02 Debarment and suspension.**

(a) CONTRACTOR certifies by execution of this Agreement that it is not now ineligible for participation in Federal or State assistance programs under Executive Order 12549, Debarment and Suspension.

(b) CONTRACTOR certifies by execution of this Agreement that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(c) Where CONTRACTOR is unable to certify to any of the statements in this certification, CONTRACTOR shall attach an explanation.

(d) CONTRACTOR specifically warrants that it has not knowingly failed to pay a single substantial debt or a number of outstanding debts to a Federal or State agency and it is not subject to an outstanding judgment in a suit against CONTRACTOR for collection of the balance. A false statement regarding CONTRACTOR's status will be treated as a material breach of this Agreement and may be grounds for termination at the option of HHSC.

#### **Section 15.03 Conflicts of interest.**

##### ***(a) Representation.***

CONTRACTOR agrees in its Proposal to comply with regulations regarding conflicts of interest in the performance of its duties under this Agreement.

##### ***(b) General duty regarding conflicts of interest.***

CONTRACTOR will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain. CONTRACTOR will operate with complete independence and objectivity without actual, potential or apparent conflict of interest with respect to the activities conducted under this Agreement with the State of Texas.

(c) *Disclosure requirements.*

(1) CONTRACTOR must disclose any existing or potential conflicts of interest relative to the performance requirements of this Agreement and must comply with other disclosure requirements set out below, as applicable.

(2) Any relationship that might be perceived or represented as a conflict must be disclosed by CONTRACTOR within 15 calendar days of its discovery by CONTRACTOR or by HHSC as a potential conflict. This disclosure requirement is a continuing obligation throughout the Initial Term of this Agreement and any extension of this Agreement.

(3) By submitting a Proposal in response to the RFP, CONTRACTOR affirmed that it has neither given, nor intends to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant or any employee or representative of same, at any time during the procurement process or in connection with the procurement process except as allowed under relevant state and federal law.

(4) In addition, it is the responsibility of CONTRACTOR to request, in writing, a determination by HHSC when there is a question as to whether a conflict exists. HHSC reserves the right to make a final determination regarding conflict of interest with respect to CONTRACTOR's relationship with other parties whether individual or corporate, public or private, and CONTRACTOR agrees to abide by HHSC's decision.

(5) A violation of the disclosure requirements applicable to this Agreement may constitute grounds for the immediate termination of this Agreement. Furthermore, such violation may be submitted to the Office of the Attorney General, Texas Ethics Commission, or appropriate State or Federal law enforcement officials for further action.

**Section 15.04 *Certification regarding good faith effort.***

HHSC is committed to making a good faith effort to assist Historically Underutilized Businesses (HUBs) through the contract award process in a manner consistent with rules prescribed by the General Services Commission (GSC) at [1 T.A.C. 111.11 et seq.](#) The GSC has established a goal of a minimum 33 percent (33%) HUB participation in non-professional services contracts, either through direct contracting or through prime or general contractors' subcontracting efforts. HHSC is required to establish that CONTRACTOR has complied with this good faith effort. The CONTRACTOR has completed or shall complete required documentation of good faith effort on forms and in the manner prescribed by HHSC. The CONTRACTOR shall comply with continuing reporting requirements imposed by HHSC or the General Services Commission.

**Section 15.05 *Child support certification.***

In accordance with [Section 231.006](#), Family Code, CONTRACTOR certifies the following:

“Under Section 231.006, Family Code, the vendor or applicant certifies that the individual or business entity named in this Agreement, bid, or application is not ineligible to receive the specified grant, loan, or payment, and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.”

**Section 15.06 *Texas Corporate Franchise Tax Certification.***

CONTRACTOR has certified that it is not delinquent in payments or obligations due or owing for state franchise taxes by executing the form entitled “Texas Corporate Franchise Tax Certification” contained in its Proposal.

**Section 15.07 *Certification regarding status of license, certificate, or permit.***

Article IX, Section 163 of the General Appropriations Act for the 1998/1999 state fiscal biennium prohibits an agency which receives an appropriation under either Article II or V of the General Appropriations Act from awarding a Agreement with the owner, operator, or administrator of a facility which has had a license, certificate, or permit revoked by another Article II or V agency. CONTRACTOR certifies it is not ineligible for an award under this provision.

**Section 15.08 *Outstanding debts and judgments.***

CONTRACTOR certifies that it is not presently indebted to the State of Texas, and that CONTRACTOR is not subject to an outstanding judgment in a suit by the State of Texas against CONTRACTOR for collection of the balance. For purposes of this section, an indebtedness is any amount sum of money that is due and owing to the State of Texas and is not currently under dispute. A false statement regarding CONTRACTOR's status will be treated as a material breach of this Agreement and may be grounds for termination at the option of HHSC.

**Section 15.09 *Unauthorized acts.***

Each Party agrees to:

- (1) Notify the other Party promptly of any unauthorized possession, use, or knowledge, or attempt thereof, of any Confidential Information by any person or entity that may become known to it;
- (2) Promptly furnish to the other Party full details of the unauthorized possession, use, or knowledge, or attempt thereof, and use reasonable efforts to assist the other Party in investigating or preventing the reoccurrence of any unauthorized possession, use, or knowledge, or attempt thereof, of Confidential Information;

(3) Cooperate with the other Party in any litigation and investigation against third Parties deemed necessary by such Party to protect its proprietary rights; and

(4) Promptly prevent a reoccurrence of any such unauthorized possession, use, or knowledge of Confidential Information.

**Section 15.10 *Legal action.***

Neither party may commence any legal action or proceeding in respect to any unauthorized possession, use, or knowledge, or attempt thereof, of Confidential Information by any person or entity which action or proceeding identifies the other Party or its Confidential Information without such Party's consent.

**Article 16. REPRESENTATIONS AND WARRANTIES.**

**EXCEPT AS SPECIFIED IN THIS ARTICLE 16 AND ARTICLE 2, CONTRACTOR MAKES NO WARRANTIES AND DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE IN RESPECT TO THE SERVICES OR DELIVERABLES.**

**Section 16.01 *Authorization.***

(a) CONTRACTOR is a corporation duly incorporated, validly existing and in good standing under the laws of its state of incorporation and has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement.

(b) The execution, delivery and performance of this Agreement has been duly authorized by CONTRACTOR and no approval, authorization or consent of any governmental or regulatory agency is required to be obtained in order for CONTRACTOR to enter into this Agreement and perform its obligations under this Agreement.

(c) CONTRACTOR is duly authorized to conduct business in and is in good standing in each jurisdiction in which CONTRACTOR will conduct business in connection with this Agreement.

(d) CONTRACTOR has obtained all licenses, certifications, permits, and authorizations necessary to perform the Services under this Agreement and currently is in good standing with all regulatory agencies that regulate any or all aspects of CONTRACTOR's performance of the Services. CONTRACTOR will maintain all required certifications, licenses, permits, and authorizations during the term of this Agreement.

**Section 16.02 *Ability to perform.***

(a) CONTRACTOR has the financial stability to carry out at least six (6) months of operations during any period of this Agreement without reimbursement for services or expenses.

(b) CONTRACTOR has the financial resources to fund the capital expenditures required under the Agreement without advances by HHSC or assignment of any payments by HHSC to a financing source.

(c) CONTRACTOR represents that each subcontractor providing a substantial amount of services under this Agreement has the financial resources to carry out its duties under this Agreement.

(d) CONTRACTOR's methods of accounting are consistent with generally accepted accounting principles and are capable of segregating costs by project, phase, stage, or cost objective in order to support change-order accounting.

**Section 16.03 *Workmanship and performance.***

(a) All Services and Deliverables provided under this Agreement will be provided in a manner consistent with the highest standards of quality and integrity.

(b) All Services and Deliverables must meet or exceed the levels of performance specified in or pursuant to this Agreement.

(c) CONTRACTOR will perform the Services in a workmanlike manner, in accordance with best practices and high professional standards.

**Section 16.04 *Compliance with laws.***

CONTRACTOR will comply with all applicable local, state and Federal laws and regulations in providing the Services and must have and maintain all applicable permits, rights and licenses to perform the Services.

**Section 16.05 *Compliance with Agreement.***

CONTRACTOR will not take any action inconsistent with any of the terms and conditions set forth in this Agreement without the express written approval of HHSC.

**Section 16.06 *Conflict of interest or lobbying.***

(a) CONTRACTOR warrants that it has no present interest and will not acquire any interest that would conflict in any manner with its duties and obligations under this Agreement. Additionally, CONTRACTOR will take the following measures in the performance of the Services:

(1) CONTRACTOR will not place its corporate name or corporate logo on CHIP enrollment materials or on CHIP referral materials developed or distributed by CONTRACTOR.

(b) CONTRACTOR has not used and will not use any efforts to lobby any member of the executive or legislative branch of the State with respect to obtaining this Agreement or changing any obligations or terms of the Agreement during its Term.

**Section 16.07 *Contingent fee arrangements.***

CONTRACTOR warrants that no person or agency, other than a bona fide regular employee or bona fide commercial agency has been employed or retained to solicit or obtain this Agreement upon a contract or understanding for a contingent fee.

**Section 16.08 *Efficiency and cost-effectiveness.***

CONTRACTOR warrants that it will use its best efforts to perform the Services in the most efficient and cost-effective manner practicable consistent with the required level of quality.

**Section 16.09 *Equipment and Software maintenance.***

CONTRACTOR warrants that it will maintain all equipment and Software (including the System) so that they operate in accordance with their specifications, including:

- (1) Maintaining equipment in good operation condition, subject to normal wear and tear;
- (2) Undertaking repairs and preventive maintenance on equipment in accordance with the applicable equipment manufacturer's recommendations; and
- (3) Performing Software maintenance in accordance with the applicable Software supplier's documentation and recommendations.

**Section 16.10 *Compatibility.***

CONTRACTOR warrants that all Software (including the CHIP administrative services system) developed, provided or used by CONTRACTOR in performance of the Services will be compatible with all equipment and applicable hardware and software platforms, upgrades and interfaces.

**Section 16.11 *Year 2000 Performance Warranty***

***(a) Definitions.***

For purposes of the warranty made under this Section 16.11, the following definitions apply:

- (1) "Accurately" means:

- (A) Calculations correctly performed using four-digit year processing;
  - (B) Functionality on-line, batch, including but not limited to, entry, inquiry, maintenance and updates support four-digit year processing;
  - (C) Interfaces and reports must support four-digit year processing;
  - (D) Successful translation into year 2000 with valid date (e.g. CC/YY/MM/DD) without human intervention. Additional representations for week, hour, minute and second, if required, complies with the international standard ISO 8601:1988, "Data elements and interchange formats - Information exchange Representation of dates and time." When ordinal dates are used, the ISO standard format CCYYDDD is used;
  - (E) Processing with four-digit year after transition to any date beyond the year 2000 without human intervention;
  - (F) Correct results in forward and backward date calculations spanning century boundaries;
  - (G) Correct leap year calculations; and
  - (H) Correct forward and backward date calculations spanning century boundaries, including conversion of previous years stored, recorded or entered as two digits.
- (2) "Date integrity" means all manipulations of time-related data (dates, durations, days of week, etc.) will produce desired results for all valid date values within the application domain.
- (3) "Explicit century" means date elements in interfaces and data storage permit specifying century to eliminate date ambiguity.
- (4) "Extraordinary actions" mean any action outside the normal documented processing steps identified in the product's reference documentation.
- (5) "General integrity" means no value for current date will cause interruptions in desired operation - especially from the 20th to 21st centuries.
- (6) "Implicit century" means for any data element without century, the correct century is unambiguous for all manipulations involving that element.
- (7) "Owner" means, as appropriate, HHSC or CONTRACTOR.
- (7) "Product" or "products" includes, but is not limited to, any supplied or supported hardware, software, firmware and/or micro code.



(8) "Valid date" means a date containing a four digit year, a two digit month and a two digit day., or the ISO 8601:1988, Data elements—Information Exchange—Representation of dates and times". When ordinal dates are used, ISO standard format of CCYYDDD is used.

(b) *General warranty.*

(1) CONTRACTOR warrants that product(s) delivered and installed under this Agreement shall be able to accurately process valid date data when used in accordance with the product documentation provided by the contractor and require no extraordinary actions on the part of the Owner or its personnel.

(2) CONTRACTOR warrants that products under this Contract possess general integrity, date integrity, explicit and implicit century capabilities.

(3) If the Contract requires that specific products must perform as a system in accordance with the foregoing warranty, then the warranty shall apply to those listed products as a system.

(c) *Duration of warranty.*

(1) The duration of this warranty and the remedies available the Owner for breach of this warranty shall be as defined in, and subject to, the terms and conditions of CONTRACTOR's standard commercial warranty or warranties contained in this Agreement.

(2) Despite any provision to the contrary in CONTRACTOR's standard commercial warranty or warranties, the remedies available to the Owner under the warranty made under this Section 16.11 must include repair or replacement of any supplied product whose non-compliance is discovered and made known to CONTRACTOR in writing within ninety (90) days after final acceptance, as that term is defined elsewhere in this Agreement.

(d) *No limitation of rights or remedies.*

Nothing in the warranty made under this Section 16.11 will be considered to limit any rights or remedies the Owner may otherwise have under this contract with respect to defects other than Year 2000 performance.

**Section 16.12 Illicit code.**

CONTRACTOR warrants that no Software (including the System) developed, provided or used by CONTRACTOR in performance of the Services will, unless authorized in advance by HHSC:

(1) Contain hidden files;

(2) Replicate, transmit or activate itself without the control of a person operating the computing equipment on which it resides;

(3) Contain any key, node lock, time-out or other function, whether implemented by electronic, mechanical or other means, which restricts or may restrict use or access to any programs or data developed, provided or used under this Agreement, based on residency on a specific hardware configuration, frequency of duration of use, or other limiting criteria.

#### **Section 16.13 Technology.**

CONTRACTOR will use proven current technology in providing the Services that will enable the State to take advantage of technological advancements and support HHSC's efforts to manage CHIP in a state of the art and professional manner.

#### **Section 16.14 Technology access.**

(a) CONTRACTOR expressly acknowledges that under [Section 2157.005](#), Government Code, state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments.

(b) CONTRACTOR represents and warrants to HHSC that the technology provided to HHSC for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:

(1) providing equivalent access for effective use by both visual and nonvisual means;

(2) presenting information, including prompts used for interactive communications, in formats intended for nonvisual use; and

(3) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.

(c) For purposes of this paragraph, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.

#### **Section 16.15 Proselytizing.**

The CONTRACTOR and HHSC mutually agree that neither party will intentionally solicit, recruit, induce, or persuade any employee of the State of Texas who is assigned to provide assistance or services to the CHIP program in connection with this Agreement to become an employee or agent of the CONTRACTOR, and vice versa, during the term of this Agreement and for one-year following the termination of this Agreement.

## **Article 17. MISCELLANEOUS PROVISIONS**

### **Section 17.01 *Entire agreement.***

This Agreement and each of the documents and inducements that are incorporated by reference into this Agreement, represent the entire agreement between the Parties with respect to its subject matter, and there are no other representations, understandings, or agreements between the Parties relative to such subject matter.

### **Section 17.02 *Covenant of further assurances.***

HHSC and the CONTRACTOR covenant and agree that, subsequent to the execution and delivery of this Agreement and without any additional consideration, HHSC and the CONTRACTOR will execute and deliver any further legal instruments and perform any acts which are or may become reasonably necessary to effectuate the purposes of this Agreement.

**IN WITNESS HEREOF, HHSC and the Contractor have each caused this Agreement to be signed and delivered by its duly authorized representative.**

**Birch & Davis Health Management  
Corporation**

**Health & Human Services  
Commission**

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**Stuart R. Friedman**  
**President**

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**Don A. Gilbert, M.B.A.**  
**Commissioner**

## **Exhibit A**

### **“Administrative Contract Issues Roll-up” Document**

## **Exhibit A: Administrative Contract Issues Roll-up**

**December 22, 1999**

**(ALL PAGE NUMBER REFERENCES ARE TO THE PRIMARY VOLUME OF THE BIRCH AND DAVIS PROPOSAL)**

1. To avoid any appearance of conflict of interest for children who are referred to the Medicaid program and who may be eligible for enrollment in the PCCM program administered by Birch and Davis (B & D), HHSC will not allow B & D to put its corporate logo or name on any materials related to the application or referral process. Please confirm B & D's acceptance of this condition.

BDHMC concurs with this requirement.

2. On p. 12, the following statement is made: "...we are amenable to performing activities related to reasonable changes without charging or altering costs." Please elaborate on the types of situations described by this statement, in which HHSC could expect accommodation without an expectation by B & D of additional compensation.

**BDHMC is a flexible and accommodating contractor. We urge you to confirm this with TDH staff with whom we work closely. The only scope changes that would require negotiation are those that would significantly impact costs and/or would require the commitment of substantial staff resources for a considerable period of time. Examples of activities that BDHMC would take in stride include timely revision of training materials and schedules, or changes in processes and procedures. Changes which may result in costs include those such as enrollment delays, additional scope of work requests not specified in the RFP (e.g., a new systems interface requirement) or requests for special reports that would require significant programming time. Ad Hoc report requests are discussed in the response to question 33.**

**After CHIP is operational, beginning May 1, 2000, BDHMC offers to accomplish some work beyond the scope of the RFP requirements without charge to HHSC. BDHMC will accommodate changes to the scope of work valued at up to \$15,000 per change up to a total of \$100,000 per contract year without cost to HHSC. Changes costing more than \$15,000 each or totaling more than \$100,000 for the contract year would be negotiated within the terms of the contract, agreed to by both parties, and reimbursed by HHSC.**

**HHSC and BDHMC would discuss and agree to each change in scope intended to be covered by this offer and accomplished without charge to HHSC. BDHMC and HHSC each will maintain an accounting of costs incurred under these rules.**

**Performance of these activities does not apply to the start-up period, because BDHMC will receive no revenue until the end of the first month of program operation.**

3. On p. 12 and p. 371, B & D commits to full operational readiness by the primary rollout dates of April 2 and May 1, 2000. However, the proposal (p. 12 and p. 371) also stipulates that this commitment is predicated on contract award by Oct. 15 and a Nov. 1 effective date of contract. If the effective date of contract occurs after Nov. 1, please describe what impact, if any, this change would have on B & D's capability to met the April 2 and May 1 deadlines.

**To enable BDHMC to meet the program start dates, HHSC provided a letter of intent authorizing BDHMC to incur start-up costs against the BDHMC budget (submitted with our original proposal on September 7, 1999) submitted in response to the Administrative Services RFP. This allows BDHMC to begin work immediately on receipt of the letter while contract negotiations are in process. BDHMC has developed a budget for the first two months of \$517,671 and commitments that total \$2,786,489. The categories and estimated budget amounts are:**

<b>Budget Item</b>	<b>Month 1</b>	<b>Month 2</b>	<b>Subtotal</b>	<b>Commitments</b>	<b>Total</b>
<b>Start-up labor</b>	43,356	93,729	137,085	0	137,085
<b>Subcontractors</b>	113,760	113,760	227,519	0	227,519
<b>Telecommunications</b>	347	6,093	6,441	463,200	469,641
<b>Rent</b>	5,790	5,790	11,580	2,073,274	2,084,954
<b>Buildout</b>	0	0	0	249,915	249,915
<b>Travel</b>	38,568	40,687	79,256	0	79,256
<b>Miscellaneous</b>	4,125	51,666	55,791	0	55,791
<b>Total</b>	<b>205,946</b>	<b>311,725</b>	<b>517,672</b>	<b>2,786,389</b>	<b>3,304,161</b>

4. On p. 88, B & D responds to the system development ownership scenarios. The following points of clarification are requested:

- If HHSC continues to use INFORM after contract termination, how will B & D support the system and make available upgrades or enhancements?

BDHMC would license the system to the subsequent contractor and would support the system through a standard support agreement.

- What sort of fee arrangement will B & D expect in exchange for ongoing system support or periodic upgrades or enhancements?

**During the term of our contract with the State, BDHMC will support and upgrade the system without charge to HHSC, within the current scope of the contract. If after termination of the contract, HHSC and B&D agree to a rate per hour/per month for reports, and a rate per hour/per month for systems upgrades, we will continue to support the system.**

- The proposal does not specifically address the question of which party will own the Texas-specific system modifications.

BDHMC will tailor, support, and own the system, exclusive of Texas-specific system modifications. BDHMC understands that the State may request that BDHMC not use Texas-specific modifications to support other similar projects. We would seek the State's approval before doing so.

- Will B & D make INFORM's source code available to a new contractor if the system's underlying logic needs to be modified to appropriately respond to changes in program policy?

Source code will not be made available.

BDHMC recognizes its responsibility to provide HHSC or its designated contractor with all appropriate data in the Texas CHIP database housed within the INFORM system. To facilitate conversion of this data, BDHMC will provide, at no additional cost to HHSC or its designated contractor, a data dictionary for all applicable data files.

**These are the current BDHMC hourly rates that we charge in connection with a "time and materials" support contract following transition to another contractor. The rates are:**

<b>Title</b>	<b>Rate</b>
<b>Project Manager</b>	<b>\$124.50</b>
<b>Senior Systems Analyst</b>	<b>\$104.25</b>
<b>Senior Software Engineer</b>	<b>\$83.25</b>
<b>Software Engineer</b>	<b>\$52.50</b>

5. HHSC intends to contract with the Texas Healthy Kids Corporation to manage the administrative services contract. What impact will that arrangement have on the Issue Resolution Document procedure described on p. 111? What modifications, if any, will be needed relative to the disposition of Action Items, Deliverables, Information Items, or Issue Resolution Documents?

**BDHMC expects that a meeting would be held with HHSC and THKC soon after contract signing to clarify from which entity (HHSC or THKC) BDHMC should plan to take direction on specific types of issues, deliverables and action items. Consistent with CHIP legislation, BDHMC will look directly to HHSC for Issue Resolution concerning program policy or contract modifications. BDHMC will use the process described in the proposal if that is acceptable to HHSC. At the meeting concerning roles and responsibilities, HHSC, THKC, and BDHMC should discuss and concur on a process to track Action Items, Deliverables, and Information items. At the close of that meeting, BDHMC expects to have clear definitions from HHSC on reporting relationships.**

6. In regard to the transition plan (p. 119), more detail is needed regarding post-transition support. Specifically, what is a “reasonable volume” of ongoing questions, and training support? Who will decide what is a “reasonable volume” and how will additional post-transition support be priced? Over what period of time would the transition plan unfold, including post-transition support?

BDHMC will devote two knowledgeable FTEs for a period of three months to work full-time with the oncoming contractor without cost. After that, if necessary, we will provide consulting services that are priced based on time and materials cost in effect at that time. Exhibit X describes that labor categories we use and includes the current price list for each labor category.

7. Because of the Texas Healthy Kids Corporation management services contract, do any features of the Management Reporting and Meetings” section (p. 120) need revision or additional detail?

BDHMC suggested that the Management Reporting and Meetings take place as described in the proposal. At the direction of HHSC, THKC could be included in those meetings.

8. In Section VI(E)(1)(e) of the RFP, it is stated that HHSC intends to contractually stipulate liquidated damages for failure to adhere to the requirement that the contractor maintain the overall level of key staff’s expertise, experience, and skill as reflected in the submitted resumes. HHSC proposes that liquidated damages of \$1,000 per day be imposed when it determines that this requirement of the RFP is being violated. In proposing this, HHSC agrees that it must specifically state in which area(s) of the contract it believes the level of expertise, experience, or skill has been reduced and its reasons for alleging this violation.

**Handled in liquidated damages matrix as agreed to on December 22, 1999.**

9. Resumes for key staff are presented on pages 139-206, including the proportion of time that will be devoted to the CHIP during the development and implementation



stages. How will B & D track and confirm that the proportion of time spent on CHIP by each key individual is consistent with the resume information in the proposal? What remedies will B & D offer when the proportion of time spent on CHIP for a particular individual is less than the amount stipulated in the proposal? Please clarify the periodicity of the proportional time commitments reflected in the resumes (weekly, monthly, etc.).

**As shown in the proposal, BDHMC has assembled qualified start-up and operations teams. Page 135 of our proposal describes BDHMC's commitment to maintaining the overall level of expertise, experience, and skill of key management and technical staff, and the process we will use to keep that commitment.**

**BDHMC employs time sheets to track all labor associated with each project it operates. Time sheets capture the allocation of time for all employees by day, week, and month. Consultants also report time allocated to each project by month. These records can be made available to HHSC for audit purposes, as required.**

**The proportion of time committed for each staff person during the start-up was computed on a five-month basis. The proportion of time committed for each staff person during operation was computed over the remaining thirty-one months of the contract period.**

10. B & D has offered to develop and publish an informational brochure as a value-added service (p. 215). However, the media contractor being hired by HHSC is already committed to designing and reproducing an outreach brochure. As an alternative value-added service, would B & D be willing to contribute an equivalent sum to increase the volume of brochures being produced by the media contractor and also distribute these brochures at the CBO training?

**Page 215 of the BDHMC proposal states clearly that "If the selected Media Services contractor does not develop an informational brochure as part of the proposal process, BDHMC will do so with HHSC's approval as an addition to our scope of work."**

**BDHMC has extensive experience in developing brochures for CHIP and similar populations. We would like to serve as an advisor and a contributor to the brochure development process. BDHMC agrees to distribute the brochures at the CBO training sessions.**

11. Please confirm that the monthly and quarterly value-added CBO meetings (p. 217) will occur on a regional basis rather than only in Austin. Please confirm that B & D will organize and publicize these events and handle all logistical arrangements.

BDHMC confirms that the monthly and quarterly value-added CBO meetings will be held on a regional basis. We will organize and publicize the meetings, and we will schedule them in locations convenient to as many CBOs as possible.

One of the twelve regional CBO events will be replaced with a video-conferencing event at which CBOs from remote regions will be able to “attend” via remote hook-up. BDHMC will conduct the event from a state-owned facility in Austin. BDHMC will agree to pay for no more than 3 local hook-ups, depending on availability of state-owned facilities. In addition to these value-added services BDHMC is providing, we will conduct face-to-face meetings with CBOs as appropriate. As we work with HHSC and the CBOs, BDHMC will explore alternative arrangements that are cost effective for both HHSC and BDHMC.

12. Please confirm that B & D is committed to twelve regional CBO meetings (p. 217).

BDHMC confirms that we are committed to twelve regional CBO meetings. After the CBO contracts are awarded, BDHMC would like to confer with HHSC to discuss the appropriate number and location of CBO training workshops.

13. B & D has already reserved toll-free numbers for the provider and applicant hotlines (p. 222). HHSC reserves the right to require alternative numbers for one or both hotlines.

During the initial discussion held in Austin, BDHMC was asked to reserve any 800 numbers (without seeking a program acronym). Two 800 numbers were subsequently reserved and will be used for the provider and applicant hotlines.

14. HHSC is interested in activating the applicant hotline as soon as the number is approved by HHSC. Once the hotline is activated, callers would hear a recorded voice message regarding basic CHIP information and the timetable for application and enrollment. This approach is meant to address the current situation in which there is no suitable state hotline to be connected to the national “Insure Kids Now” hotline. At present, the national hotline connects to the Department of Health Medicaid hotline, which involves some drawbacks. Please respond to whether B & D is willing to activate the hotline with the recorded message under this revised timetable.

BDHMC will activate the interim applicant hotline by December 1, 1999. Callers will hear a recorded message. Once activated a caller will be able to listen to the recorded message and hang-up; transfer automatically to another number as appropriate; or elect to leave a personal message. BDHMC made assumptions of

200 calls a day, 30 days a month, and operation of the line until April 2, 2000. BDHMC will provide this as a free interim service to the CHIP program.

If BDHMC is asked to do follow-up in connection with the personal information left on the interim hotline's voice-mail, compensation for this service will be negotiated on a time and materials basis as a separate service from the contract deliverables.

BDHMC can provide a number of reporting elements of hotline activity. BDHMC's Centre Vu is a powerful call tracking, storage, and reporting tool for the automated call distributing (ACD) system. Centre Vu permits us to report call activity on a number of parameters, including number of calls, average length of calls, number of abandoned calls, and number of callers transferred to another number.

15. The proposal is unclear regarding the role of the provider hotline (p. 222). The RFP requires the provider hotline to be available to all CHIP providers, regardless of their relationship with a health plan. Health plans are not required to provide CHIPO eligibility or enrollment information for specific children. Please confirm your understanding that the provider hotline must be accessible to all providers needing eligibility or enrollment information, regardless of their affiliation with a health plan.

BDHMC did assume that health plans would have hotlines for providers, and that providers would inquire of the health plan with which they are contracted to determine whether a particular child was enrolled in that plan. However, it is our intent to make the provider helpline accessible to all providers, regardless of their affiliation.

16. On pages 241-242, a scalable approach to hiring for the hotline is described. However, it is unclear whether the proposal assumes the concentrated impact of specific outreach events, media buys, or other external factors (like the ERS summer enrollment period) on the volume of applications and subsequent enrollments. Please confirm B & D's understanding that the flow of applications will rise and fall throughout the year and that the hiring approach described in the proposal is intended to appropriately manage this effect.

BDHMC's hotline staffing is scalable. We anticipate large increases in staffing will be needed in response to major advertising campaigns and other specific events. Our staffing levels are predicated on a core of permanent staff who will be augmented by temporary staff in times of high demand. BDHMC

will work closely with HHSC to coordinate our staffing with the expected campaign events.

17. B & D acknowledges the performance standard requirements for the call center (p. 250) and outlines a comprehensive plan for achieving these goals. Consistent with the RFP's requirements (Section VI-E-2-a), please propose financial incentives for specific levels of call center performance improvement. Please specify to what use B & D would apply these financial rewards, if they are achieved. For example, would a portion of the financial incentives be distributed to call center employees who perform at an exemplary level?

Resolved within the context of the liquidated damages matrix.

18. The proposal states the CHIP website will be "reliable and efficient." However, no performance parameters related to this performance measure are provided. Please provide additional detail regarding how the reliability and efficiency of the website will be monitored and documented. In doing so, please stipulate to what volume of traffic the website will be scaled. Please submit your recommendation regarding liquidated damages for failure to maintain a stable and reliable website.

**BDHMC intends to use an Internet Service Provider (ISP) such as Southwestern Bell Corporation or AT&T to house the website. This approach will assure that the website is reliable and efficient. A significant advantage of the use of one of these providers is that their technology permits an almost unlimited volume of traffic to the site. Privacy is assured through the use of state-of-the-art encryption techniques. BDHMC will provide monthly reports of web activities including the volume of hits, failures, downtime if any, and other information the HHSC might wish us to report.**

**Handled in liquidated damages matrix as agreed to on December 22, 1999.**

19. In its discussion of the CHIP website (pages 257-265), there is no mention of B & D securing an URL. Please confirm that B & D will secure, subject to HHSC approval, a suitable URL, and that this URL will revert to HHSC in the event of contract termination.

**BDHMC does intend to secure a suitable URL with the approval of HHSC and will transfer it to HHSC upon termination of our contract.**

20. HHSC concurs with the recommendation that online applications and associated incremental pricing be evaluated at a later time (p. 264). However, given the aggressive timetable for development of outreach materials and CBO training, HHSC wishes to resolve this issue no later than December 31, 1999. Please respond to this proposed timetable.

BDHMC agrees to work with HHSC to try to resolve this issue no later than December 31, 1999. BDHMC believes that the ability to file applications on-line will help HHSC achieve the CHIP enrollment goals.

21. In response to the section on the generic application (p. 269), HHSC wishes to clarify the current timetable. Analysis of public input has been completed, and we intend to focus-test the final version of the draft application in early November. Work on the application is slated to be complete by mid-November, and B & D will be afforded an opportunity to provide input prior to its final adoption.

BDHMC was given the opportunity to provide input into the application and its configuration before its final adoption. Similar input opportunities will be given for the application booklet.

**HHSC and BDHMC will work together collaboratively to define and articulate the business rules that form the basis of the Texas CHIP automated system. These business rules will be consistent with the RFP requirements, pending federal regulations, the federal and state CHIP statutory requirements, and HHSC program policies as articulated in the state plan amendment. During the development process, BDHMC will solicit HHSC's clarification of specific system requirements or input regarding specific system development options. This development work is considered to be within the scope of the RFP. To facilitate this process, HHSC commits to finalization of the application as it will be initially deployed no later than Dec. 15, 1999. System development that is considered to be within the scope of the RFP and the BDHMC proposal will be considered finished at the conclusion of the readiness review.**

**Program or statutory changes that occur following the completion of the readiness review will be individually analyzed to determine whether they fall within or outside of the RFP's scope. HHSC and BDHMC will negotiate in good faith in making this determination. Those that are determined to fall outside the scope either will be the basis for additional compensation or will be charged against the \$15,000/\$100,000 pool.**

Following deployment of the application and completion of system readiness, "normal and routine" changes to the application will be incorporated into the CHIP automated system without additional charge to HHSC. In this context, "normal and routine" means a change to the application that involves a visual modification (e.g., change in color, change in font size, change in size of response blanks), rearrangement of existing data elements, or deletion of existing data elements. Addition of completely new data elements to the application will be considered outside the scope of "normal and routine" and, subject to negotiation

between HHSC and BDHMC, will be the basis for additional compensation or a draw against the \$15,000/\$100,000 annual pool for out-of-scope changes.

22. B & D's recommendation for CBO identification numbers is appropriate (p. 274-276). HHSC intends to combine this approach with a broadly worded consent statement on the application to facilitate the exchange of information between program entities. Consistent with errata #2, HHSC intends to require CBO follow-up only in situations involving failure to enroll and during the annual re-enrollment process. CBO follow-up will only occur in situations where a verifiable connection between a family and a CBO has been established. CBO follow-up or notifications will not be required for incomplete applications, cost-sharing delinquencies, and disenrollment situations.

While BDHMC prefers a policy that permits CBOs to follow-up in any situation if the CBO and the child/family have a relationship, BDHMC understands that CBO follow-ups will be limited to situations involving failure to enroll and during the annual re-enrollment process.

23. Please confirm B & D's understanding of the provision in errata #1 stipulating that the administrative services contractor is responsible for storing and distributing all generic applications printed by the state.

BDHMC understands that we must store and distribute all generic applications.

24. Based on public input, HHSC has determined that the generic application will not include the health status question designed to preliminarily identify children with complex special health care needs. Rather, this inquiry will occur during the enrollment process. Consequently, there will be no requirement for referrals to the Title V program (p. 287).

BDHMC confirms that no referrals to the Title V program will be required. However, we understand that an interface is still required to permit the exchange of information.

25. The proposal outlines the enrollment materials on pages 296-297. Consistent with the third round of Q & A published by HHSC, provider directories are not included in this list. However, HHSC has now determined that provider directories will be required for each health plan in a CSA. The provider directories will be published by the health plans, but they must be distributed by B & D. HHSC estimates that an average of two directories will be mailed in each enrollment package.

**BDHMC understands that the health plans will prepare and publish the provider directions that we will then distribute to each family with a child whose application for CHIP has been approved.**

HHSC and BDHMC are committed to minimizing the size and weight of the enrollment materials, keeping in mind the program requirements that must be met by the materials. In this context, BDHMC and HHSC agree that they share the same goals: enrollment materials that, in the aggregate, do not represent a volume of material that will intimidate or discourage enrollees and that may be handled and mailed by BDHMC at reasonable cost.

26. The RFP requires translation of all standardized written materials into Spanish. Upon further consideration, HHSC has determined that it will be more cost-effective to handle this task internally which will relieve B & D of this responsibility under its proposal.

**BDHMC confirms our understanding that HHSC will provide for translation of all standardized written materials into Spanish in a timely fashion. Translation by HHSC should expedite the process since we will not be required to seek approval of the Spanish text. HHSC notes the maximum delivery times for DHS-translated materials:**

**---Correspondence within 2 business days**

**---Flyers within 5 business days**

**---Forms within 10 business days**

---Pamphlets and brochures within 10 business day

27. Cost-sharing requirements are recapitulated on p. 308. However, this summary does not recognize a situation involving a family at or below 100% FPL that is not eligible for Medicaid based on assets. No cost-sharing will apply to any CHIP-eligible family below at or below 100% FPL.

BDHMC understands that there is no premium share for CHIP-eligible families at or below 100% FPL.

28. B & D outlines its proposal for implementing the cost-sharing requirements on pages 307-327. The proposal does not indicate whether the lockbox vendor will be located in Austin. After consulting with staff from the Comptroller of Public Accounts and consistent with errata #1, the following clarifications are offered:

- Because of security issues, difficulty of account reconciliation, and obstacles posed by Comptroller operating procedures or rules, the requirement for local on-site cash payment will be waived

- On a monthly basis, the Comptroller's Office will clear automatic savings account or checking account withdrawals using a file produced by B & D
- Because of cost issues, the requirement for credit card transactions will be waived
- The Comptroller's office cannot provide lockbox services. If B&D's lockbox vendor is located in Austin, cost-sharing receipts must be delivered to the State Treasury office as stipulated in the original discussion of proposal issues. To facilitate accurate reconciliation, the receipts will be bundled in groups of 100-150 checks/money orders per group. The checks must be micro-coded prior to deposit at the Treasury to facilitate the reconciliation process.
- If the lockbox vendor is located outside of Austin, the Comptroller will establish a bank account in that city and will work with B&D, HHSC, and the bank to facilitate the receipt and reconciliation of all cost-sharing receipts. Any bank charges that accrue as a result of checks and money order processing must be absorbed by B&D, not the Comptroller. In this regard, the Comptroller also recommends micro coding of the receipts prior to delivery at the bank to reduce the bank service charges.

BDHMC confirms that many lock box issues still need to be resolved. Within four weeks of contract execution BDHMC will meet with HHSC and staff from the Comptroller's office, to discuss these issues. BDHMC understands the requirement that the lock box vendor must be a Texas bank.

29. Section VI-E-2-g of the RFP states HHSC's intent to negotiate liquidated damages for failure to meet the premiums payable requirement in a timely manner. Please submit your recommendation regarding liquidated damages in this area.

Handled in liquidated damages matrix as agreed to on December 22, 1999.

30. Section VI-E-2-g does not specifically address the calculation of amounts due the dental contractor but is HHSC's intent that B & D calculate the amount owed this contractor on a monthly basis. B & D will determine this amount by multiplying the total number of enrolled children by a single pre member/per month premium. Please indicate whether B & D will do this task as part of its overall premiums payable responsibilities.

BDHMC understands that this task will only involve multiplying the number of enrolled children by the monthly Statewide dental premium and including the product in our monthly premiums payable report to the HHSC. Based on this understanding of the task, BDHMC will accept this responsibility at no increase in unit price.

31. Please confirm your understanding that the on-line access requirements (p. 343) do not include dental claims submission or tracking of the \$300 annual therapeutic dental cap.



**BDHMC understands that we have no role in the submission or tracking of the \$300 annual therapeutic dental cap.**

32. The proposal confirms that HHSC will designate up to 10 staffers with on-line access privileges. HHSC reserves the right to delegate some of these slots to specific personnel with the Texas Healthy Kids Corporation.

**HHSC may allocate the ten staffers between HHSC and THKC as HHSC prefers.**

33. The RFP contains the following stipulation: Rapid ad hoc reports “will be defined on a case-by-case basis, depending on the requirements of each ad-hoc report. Ad-hoc reports that require contractor programming or direct assistance will be reimbursed according to a price that will be negotiated prior to the generation of each report.” Please stipulate the pricing methodology you will use to assign a cost to these reports.

**BDHMC will not charge for ad hoc reports that fall within the capabilities of our relational databases and that can be generated by our report writer. However, when requested to develop reports outside these boundaries, BDHMC will work with HHSC to size the task and will propose a cost to gather and input the data, program the requirement, and develop the report.**

**BDHMC proposed a Time and Materials (T&M) type task order for each special Ad-Hoc report that exceeds the capabilities of our relational database report writer. Each task order will include a level of effort per labor category. Attachment X includes a description of our labor categories and a current price list for each labor category.**

**Any additional direct costs necessary to complete the project will be added to the labor costs. Reimbursement for these other direct costs will be the actual cost plus applicable handling charge without a fee. After HHSC approves the task order, we will produce the report as defined.**

At the same time, please indicate the approach you will take for pricing assignments or requests that are outside the strict bounds of the RFP, B & D’s proposal, or the negotiations that occur prior to contract execution.

**For major out-of-scope activities BDHMC proposes that HHSC provide BDHMC with a detailed document outlining the requirements for requested work that is out-of-scope of the contract. BDHMC would then respond with a document outlining our understanding of the requested work and specifying the staff, resources, and time we believe the work will require. This response would include a separate detailed cost proposal. It is our expectation that these types of requests would require consensus between HHSC and BDHMC and a contract**

**amendment. BDHMC will provide a formal clause that defines this approach to include in the contract.**

34. As noted in the Section VI-E-2-j of the RFP, the Department of Human Services will transmit data to B & D concerning its disposition of Medicaid referrals. This data will also include information regarding children whom DHS has determined will be eligible for CHIP because of a Medicaid denial based on income or assets. Some of these children may have originally applied to DHS, which means they will not be in the B & D automated system. The system must automatically deem these children eligible for CHIP and begin the enrollment process. No application fee will be due for a child who begins the application process at DHS, but an enrollment fee will be payable if the child is subsequently enrolled in CHIP.

Clarification concerning applications “deemed” eligible” that BDHMC will receive from DHS. BDHMC expects that the applications we receive from DHS will have the following characteristics:

- **DHS sends BDHMC an electronic file complete in all regards with no requirement for follow-up for missing materials**
- **DHS makes the income determination and keeps all supporting documentation**
- **BDHMC is not required to screen the applicant for THKC rather than CHIP**
- **BDHMC is not required to handle or store any paper related to the application**
- **The process is entirely automated, with BDHMC’s resulting application record reflecting the DHS “deeming” of the child’s eligibility for CHIP**

BDHMC will be compensated for DHS “deeming” where applications originate with DHS using the same approach as the THKC “deemed” children (i.e., 25 % for purely electronic referrals with no transfer of documentation, 50% for electronic referrals accompanied by paper documentation). However, HHSC clarifies that this fee is in lieu of the normal application fee, not in addition to it.

35. Section VI-E-2-l of the RFP states HHSC’s intent to negotiate liquidated damages for failure to meet the five-day disaster recovery requirement. Please submit your recommendation regarding liquidated damages in this area.

**Handled in liquidated damages matrix as agreed to on December 22, 1999.**

36. Question #41 of the responses to questions posed at the Proposers’ Conference (Q & A #2) includes an error. The HHSC erroneously states: “If the family fails to choose a PCP, the contractor is required to follow up, either directly or through a CBO.” This is inconsistent with other HHSC answers and the requirements of the RFP.

HHSC wishes to clarify that B & D will not be required to follow-up when a PCP is not selected.

**BDHMC understands that we will not be required to follow-up when a PCP is not selected.**

37. In the Q & A #3, HHSC states its expectation the dental claims contract will be executed by the end of 1999. At this time, this timetable is uncertain. Contract execution for dental claims may not occur until early in 2000.

**BDHMC understands that the dental claims contract may be delayed until early in 2000. We will review the RFP when it becomes available.**

38. In Section 1 of the fee proposal, B & D indicates a contract duration of “October 15, 1999 through October 14, 2001 (36 months).” Please clarify the apparent contradiction between the 36 month period and the specified date range, which is 24 months.

The contract duration stated in the fee proposal is in error. BDHMC understands that the base contract will run 36 months from contract execution, and that there may be one or two single-year extensions at the discretion of HHSC.

39. Please confirm our understanding of your proposed fee schedule. We understand your monthly maintenance fees to be based on the entire enrolled CHIP membership. For example, the amount due for 75,000 enrollees would be \$1,125,000 (75,000 times \$15.00) while the amount due for 75,001 enrollees would be \$675,009. Similarly, the amount due for 150,000 enrollees would be \$1,350,000 while the amount due for 150,001 enrollees would be \$600,004. Please explain how a fee schedule that results in a periodic and substantial drop in revenue will provide a sustainable revenue flow to support the program infrastructure that is necessary at various levels of enrollment.

**HHSC’s understanding of the fee schedule is correct. BDHMC’s fee structure is designed to cover costs even at low enrollment levels. The fee structure provided by HHSC (e.g., 150,001 to 300,000) was not amenable to finer adjustments in unit prices that would reduce the swings in revenue. We offered substantial volume discounts.**

**BDHMC’s fee schedule will be as submitted with the following clarifications or amendments:**

- **The monthly fee schedule is reduced at an approximate level of \$400,000**
- **Interim applicant hotline activated as a free service**
- **Amount due to dental contractors calculated at no added cost**

- **No charge for new ad hoc reports that fall within the capabilities of our relational databases and that can be generated by BDHMC's report writer**
- **BDHMC agrees to pay for three local videoconferencing hookups, depending on the availability of State-owned facilities**
- **Agreement for maximum of \$15,000 for each out-of-scope change up to a maximum of \$100,000 per contract year**

40. Based on analysis of the original 1 million hits per month estimate for provider eligibility and enrollment inquiries, HHSC is requesting that B&D address the issue of whether its provider inquiry capability is scalable and what impact that scalability would have on cost.

Based on the December 22, 1999 phone call involving Randy Fritz, Stuart Friedman, and Sandy Tyler, this issue will be set aside with no baseline data or subsequent analysis expected.

41. CHIP-eligible children who are enrolled in the Texas Healthy Kids program will be transferred automatically to the CHIP system effective April 3.

**HHSC intends to facilitate the transfer of CHIP-eligible children from THKC through electronic data transfer rather than data entry of information from a hard copy application. What is not known at this time is whether BDHMC will be required to receive and store THKC documentation associated with the "deemed" children. Because of this uncertainty, and because HHSC recognizes that deeming these children will have an impact on BDHMC's fee assumptions, the following amendment to the fee structure will be implemented:**

- 1. If the THKC deeming process is implemented on a purely electronic basis, with no transferal of documentation, BDHMC will be paid 25 percent of its application fee for each deemed child.**
- 2. If the basic program information is transferred electronically but BDHMC is required to receive and store paper documentation, BDHMC will be paid 50 percent of its application fee for each deemed child.**

**The following also apply:**

- **THKC will determine which children are CHIP-eligible either on the basis of whether they qualify for THKC premium assistance or on the basis of family income, whichever is more appropriate given THKC's program data.**

- The CHIP-eligible children that are transferred to CHIP will be “deemed eligible.” No further action on BDHMC’s part is required to establish their eligibility.
- CHIP-eligibility will be made on the basis of a THKC income determination. BDHMC will be expected to receive and store any income-related THKC documentation.
- The process will be based on an electronic transfer of eligibility data from THKC to BDHMC
- As with the DHS deeming process, THKC will transfer the information that is needed to deem the child eligible and initiate the enrollment process. The extent to which the current THKC application reflects the CHIP application is irrelevant to this process.
- BDHMC will not be required to obtain a signature from the family..
- If THKC paper applications are transferred, the storage requirement for them will be the same as the regular CHIP generic application.

42. B&D determined that it would not be cost-effective to use the West Texas Disaster Recovery Operations Center for disaster recovery and backup and data center functions. Please provide the detail of B&D’s economic analysis in support of that conclusion.

**While the economic analysis was a significant factor, this was not the primary basis for our decision not to incorporate the use of the West Texas Disaster Recovery Operations Center (WTDROC) into our proposal. The reason was first and foremost that the services they provide do not meet the RFP requirements. WTDROC does provide computer service backup. However, the timeframe in which they can make computer backup available is up to two full weeks after they are notified of the need for back-up. This timeframe does not meet the RFP’s five-day requirement and could subject BDHMC to liquidated damages, by definition. Further, they do not provide call center back-up services nor do they provide workspace we could use for our staff. The issue here is the adequacy of the service and timing of that service.**

**In addition, WTDROC has no workspace that BDHMC could use to relocate our staff. They have no telephone system to support our call center requirements. The charges started at \$10,000 and run upwards of \$30,000 per month, depending on the computer capability we might require. There would be additional costs to relocate our staff at some other location, and other costs for disaster back-up for the call center. The BDHMC disaster recovery plan and the reasons for not using West Texas Disaster Recovery are described in our proposal on pages 367-369.**

43. Given the state's outreach strategy for ERS participants, and the likelihood that some of the ERS participants would have sent in incomplete applications anyway, HHSC does not believe any additional consideration for follow-up letters related to the social security numbers is necessary. Regarding assets test follow-up questions, HHSC

proposes that the number of follow-up letters that are generated SOLELY because of the assets test be compared to the total number of transactions processed through June 30, 2000 for which BDHMC received compensation on a per-unit application fee basis. This would encompass 3 months of transactions. If the total number of Assets-test-only follow-ups is less than or equal to 10 percent of the total number of transactions, then no additional financial consideration will be necessary. If the amount exceeds 10 percent, BDHMC and HHSC will negotiate in good faith to address this out-of-scope workload and cost issue.

Final disposition of this issue is consistent with the description above, except that the test period baseline will be up to 7 percent of assets-test-only follow-ups as a proportion of all transactions rather than 10 percent as indicated above. The 3 month test period will remain the same (through June 30, 2000).

**Exhibit B:**

**CONTRACTOR's Proposal**

**[September 7, 1999]**

**Exhibit C:**

**Health & Human Services Commission  
Children's Health Insurance Program  
Administrative Services Request for Proposals**

**[July 7, 1999]**



**Exhibit D:**

**Tailored Remedies Matrix**

**Children's Health Insurance Plan, Administrative Services Contract  
Tailored Remedies Matrix**

Service/component <sup>1</sup>	Performance Standard <sup>2</sup>	Measurement		Remedy (N = Notice of deficiency; Numerals indicate multiplier of Liquidated Damage Value of \$250)										
		Period <sup>3</sup>	Assessment <sup>4</sup>	Met Goal <sup>5</sup>	-1	-2	-3	-4	-5	-6	-7	-8	-9	>-9
Management Staff & Qualifications Experience	Experience & education levels established in Contractor staffing proposal as categorized in 11/03/99 BDHMC Labor categories	Ongoing (monitored with staffing changes)	Following a 14 day cure period, notice of deficiency is sent and LDs are assessed on a per day basis	0	N	1	2	2	3	3	3	3	4	4
Call Center operations				—	—	—	—	—	—	—	—	—	—	—
A. Call answer rate	90% of calls answered within 20 seconds of 1 <sup>st</sup> ring	Quarterly (each month measured separately)	Each percentage point below 90% for any month within quarter	0	N	1	2	2	3	3	4	4	5	5
B. Menu systems with English & Spanish voice activation	100% of menu systems with voice activation	Quarterly	Each day of non-compliance	0	N	1	2	2	3	3	4	4	5	5
C. Blocked call rate	5% of all calls or less	Monthly (based on daily average)	Each half percentage point above 5% for the month	0	N	1	2	2	3	3	4	4	5	5

**Children's Health Insurance Plan, Administrative Services Contract  
Tailored Remedies Matrix**

Service/component <sup>1</sup>	Performance Standard <sup>2</sup>	Measurement		Remedy (N = Notice of deficiency; Numerals indicate multiplier of Liquidated Damage Value of \$250)										
		Period <sup>3</sup>	Assessment <sup>4</sup>	Met Goal <sup>5</sup>	-1	-2	-3	-4	-5	-6	-7	-8	-9	>-9
D. Call hold rate	5 minutes or less, 99% of calls (except for verifiable operational defects not within the control of BDHMC)	Monthly (based on daily average)	Each percentage point of calls below 99% for the month	0	N	1	2	2	3	3	4	4	5	5
E. Call abandonment rate	5% or less after 5 seconds	Monthly (based on daily average)	Each half percentage point of calls above 5% for the month	0	N	1	2	2	3	3	4	4	5	5
Web site reliability & stability	Fully functional and accessible for all but 8 hours per month, not including routine maintenance; routine maintenance may only occur between the hours of 10:00 p.m. and 7:00 a.m.	Monthly	Each half-hour in excess of 8, not including routine maintenance, for the month	0	N	2	2	3	3	3	4	4	5	5
Application processing														
F. Data entry of mailed applications	99% of applications data entered within 3 business days of receipt	Monthly	Each half percent of applications below 99% not processed within timeframe	0	N	1	1	2	3	3	4	4	5	5

**Children's Health Insurance Plan, Administrative Services Contract  
Tailored Remedies Matrix**

Service/component <sup>1</sup>	Performance Standard <sup>2</sup>	Measurement		Remedy (N = Notice of deficiency; Numerals indicate multiplier of Liquidated Damage Value of \$250)										
		Period <sup>3</sup>	Assessment <sup>4</sup>	Met Goal <sup>5</sup>	-1	-2	-3	-4	-5	-6	-7	-8	-9	>-9
G. Referrals to TDHS	99% of applications referred within 24 business hours after completed application time stamp	Monthly	Each half percent of applications below 99% not referred within timeframe	0	N	1	1	2	2	3	3	4	4	5
H. Eligibility determination notices	99% of notices mailed to applicant within 5 business days of time stamp	Monthly	Each half percent of notices below 99% not mailed within timeframe	0	N	1	1	2	2	3	3	4	4	5
I. State employee subsidy eligibility notices	99% of notices mailed to eligible applicant within 5 business days of time stamp	Monthly	Each half percent of notices below 99% not processed within timeframe	0	N	1	1	2	2	3	3	4	4	5
J. Referrals to Texas Healthy Kids Corporation	99% of applications that are neither referred to Medicaid, CHIP-eligible, or state employee subsidy-eligible within 24 business hours of time stamp	Monthly	Each half percent of applications below 99% not referred within timeframe	0	N	1	1	2	2	3	3	4	4	5

**Children's Health Insurance Plan, Administrative Services Contract  
Tailored Remedies Matrix**

Service/component <sup>1</sup>	Performance Standard <sup>2</sup>	Measurement		Remedy (N = Notice of deficiency; Numerals indicate multiplier of Liquidated Damage Value of \$250)											
		Period <sup>3</sup>	Assessme nt <sup>4</sup>	Met Goal <sub>5</sub>	-1	-2	-3	-4	-5	-6	-7	-8	-9	>-9	
K. Referrals to Texas Department of Health Title V program	99% of applications referred within 3 business days of time stamp	Monthly	Each half percent of applications below 99% not referred within timeframe	0	N	1	1	2	2	3	3	4	4	5	
Delivery of Health Plan payment data	100% of data delivered by monthly cut-off date	Monthly	Per day that data is delivered following monthly cut-off date	0						½ % of monthly payment under the contract					
Automated System Security and Confidentiality															
L. Detailed security & confidentiality procedures	Approval of initial and revised procedures by HHSC	Initial procedure s by 01/31/00; Annual reviews thereafter	Each day following 01/31/00; each day following date of annual review	0	N	1	2	3	4	5	5	5	5	5	
M. Employee confidentiality statements	Signed confidentiality statements within 5 business days of employment	Quarterly (average of all new employee s during the quarter)	Each business day beyond 5	0	N	1	2	3	4	5	5	5	5	5	

**Children's Health Insurance Plan, Administrative Services Contract  
Tailored Remedies Matrix**

Service/component <sup>1</sup>	Performance Standard <sup>2</sup>	Measurement		Remedy (N = Notice of deficiency; Numerals indicate multiplier of Liquidated Damage Value of \$250)										
		Period <sup>3</sup>	Assessment <sup>4</sup>	Met Goal <sub>5</sub>	-1	-2	-3	-4	-5	-6	-7	-8	-9	>-9
Disaster recovery														
N. Resumption of Administrative Services	5 working days or less following disaster causing service interruption	Ongoing	Each working day beyond 5	0						.5% of monthly payment under the contract				

**Exhibit E:**

**Assumptions Governing Application of  
Liquidated Damages**

## **EXHIBIT E: ASSUMPTIONS GOVERNING APPLICATION OF LIQUIDATED DAMAGES**

**December 22, 1999**

The Health & Human Services Commission and Birch & Davis Health Management Corporation believe that adoption of guidelines and definitions are necessary for the Liquidated Damages to be understood and applied accurately and consistently. Accordingly, the following guidelines pertain to the liquidated damages matrix:

- 1) The period of assessment for each Service Component is indicated on the matrix. These periods, which vary from service component to service component, are described in the "Period" column of the matrix. For periods that are based on months or calendar quarters, variations in number of days per month will not be a factor.
- 2) Deficiency calculations (whether percentage or day) must equal or exceed the indicated assessment increments before that increment is triggered, (i.e., partial realization of a Multiplier does not trigger a LD and Multipliers are not rounded up).
- 3) For service components that are measured on a quarterly basis, each calendar quarter begins assessment anew, without regard for performance (at, above, or below standard) for the preceding calendar quarter or any month therein.
- 4) The maximum remedy multiplier for any service component that is measured on a quarterly or monthly basis is 5. Thus, for those that are measured on a quarterly basis, the maximum liquidated damages in any quarter is  $5 \times \$250 = \$1,250$ . For those that are measured on a monthly basis, the maximum liquidated damages in any month is  $5 \times \$250 = \$1,250$ .